IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

98-8429 & 99-8169-JJ

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

GEORGE HIGH & VIRGINIA HIGH

Defendant-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR APPELLANT

Brief For George High, Pro Se
Reg. No. 43141-019
Federal Prison Camp
2600 Highway 301 So.
Jesup, Ga. 31599

This Is A Criminal Case Which Is Entitled To Preference Under F.R.A.P. 45(b), As Appellants are Incarcerated.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA	*	
Appellee,	*	
v.	*	APPEAL NO. 99-8169-JJ 98-8429
GEORGE HIGH & VIRGINIA HIGH	*	
Appellants	*	
	*	

CERTIFICATE OF INTERESTED PERSONS

AND COPORATE DISCLOSURE STATEMENT

C. Michael Abbott, Attorney for Virginia High

Tony Axam, Trial Attorney for Robert L. Ward

Richard H. Deane, Jr., U.S. Attorney

The Honorable John Dougherty, U.S. Magistrate Judge, N.D. Ga.

George High, Defendant-Appellant

Virginia C. High, Defendant Appellant

William A. Morrison, Attorney for George High

H. Allen Moye, Assistant U.S. Attorney

Janice A. Singer, Appellate Attorney for Robert L. Ward

Uited States of America

The Honorable Robert L. Vining, Jr., Senior U.S. Dist. Judge

Robert L. Ward, Jr., Co-Defendant

STATEMENT REGARDING ORAL ARGUMENT

Appellant's, George and Virginia high request oral argument in this case. Oral argument would benefit the Court in its disopsition of this case because this case turns on the facts as developed in the record. Appellant's belives that the District Court erred in its finding of facts and its conclusion of law. Oral argument will assist the Court in its examination of the record.

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98-8429-JJ

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO.: 99-8169

GEORGE W. HIGH, SR.;
VIRGINIA C. HIGH,

DC DKT NO.: 92-00182 1-CR-5-RLV

Defendants-Appellants

verses

UNITED STATES OF AMERICA

Plaintiffs-Appellee.

MOTION FOR LEAVE TO FILE JOINT BRIEF AND APPENDIX UNDER FRAP Rule 3 (b)

COMES NOW THE Defendants, George and Virginia High, acting in Pro Se , and respectfully moves this Honorable Court to enter an order allowing the Defendants to file joint brief and thereafter proceed as a single appellant.

In support of said motion, Defendants shows to the Court the following:

1. The Defendants, George and Virginia High, was indicted with 13 co-defendants in a 39 count indictment charging conspiracy to violate and substantive violations of (21 U.S.C.§§ 841(a)(1) and 846 and 18 U.S.C. §2). also(18 U.S.C.[[371 and 2), and also (31 U.S.C. § 5324(3), I! U.S.C §2) and C.F.R. § 103.11

2. The Government's evidence at trial and on direct appeal was substantially simular against George and Virginia High

3. Defendants, George and Virginia High had count 13 reversed on direct appeal and had count 1 (conspiracy) confirmed, and said Defendants has like sentences remaining.

4. The Defendants, George and Virginia High belives that any brief, appendix or motion filed by either would be identical, and to repete such would unnecessary congest the Court's Files.

WHEREFORE, the Defendants, GEORGE W. HIGH, SR., and VIRGINIA C. HIGH, respectfully request that this Court enter an order allowing the Defendants to File Joint Brief and thereafter proceed as a single appellant.

Respectfully submitted,

George W. High, Sr.

Virginia C. High

Dated: 26th day of June 1999

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals has jurisdiction to consider this case pursuant to title 28 U.S.C. § 1291 and Rule 4 of the Federal Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT, OR IN THE ALTERNATIVE FOR A NEW TRIAL ??

II. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE DEFENDANT'S MOTION FOR A NEW TRIAL BASED ON THE GOVERNMENT'S VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194 ??

STATEMENT OF THE CASE

(i) Course of Proceeding and Disposition in Court Below.

George and Virginia High, and Robert Ward, Defendants-Appellants, were jointly indicted with each other and twelve co-defendants on December 10, 1992, by a Grand Jury sitting in the Northern District of Georgia, on counts charging drug distribution and laundering of monies derived from the drug sales. (R1-89). Pleas of not guilty were entered at arraignment (R1-146; R3-110; Ward R1-106). On the government's motion, the case was declared to be a comples case. (R1-106).

The case was severed for trial, and the High's and Ward proceeded to trial togather, and with co-defendant Alex Gracia, in September, 1993.

After a trial which lasted several weeks, the jury returned verdicts finding George and Virginia High guilty of participating in a conspiracy to distribute and possess with intent to distribute cocaine (count one); finding the High's and Ward guilty of participating in a conspiracy to launder drug proceeds, to structure currency transactions and to defraud the United States (count) Thirteen); finding George High guilty of weapons violations (counts three and nine); finding George and Virginia High guilty of seperete violations of 31 U.S.C. § 5324 (Counts 14- George High only; 16, 19, 21, 22 - Virginia High only); and, finding Virginia High guilty of violations of 18 U.S.C. §1956 (counts 17, 18, 20, 23, 24). (R2-348; R4-349; Ward R1-351).

George and Virginia High were sentenced to terms of incarceration of totalling 97 months; Robert Ward was sentenced to a term of incarceration of 41 months. (R2-394); R4-390; Ward R1-397). Based upon the intervening decision of the Supreme Court in Ratzlaf v. United States, _____U.S._____, 114 S.Ct. 655, (1994), the dist-judge declined to sentence either George or Virginia High on those counts charging Title 31 vilolations on which they were convicted, and insted offered each the opportunity to file a motion to set aside the convictions. (R19-12; R20-9).

After the imposition of sentence, and the denial of motion for new trial filed by Robert Ward, timely notice of appeal were filed. Seperate motions for new trial were filed by the High's and those motions were later granted as to the substantive structuring offenses. (R2-353, 401; R4-393, 398; Ward R1-354; 396; 406; 414, 415). **Each defendant is now incarcerated.**

On 8/5/97, Virginia High filed motion for new trial with brief in support (R6-509). Motion by Virginia C. High to vacate sentence persuant to 28:2255, 8/5/97 (R6-510). On 8/7/97, Virginia High filed Pro Se MOTION for appointment of Counsel (R6-513). 8/12/97 USA filed Motion to to dismiss motion to vacate, set aside. or correct sentence as to Virginia High (R6-514). 8/14/97 Virginia High filed amendment to motion to vacate sentence [510-1] pursuant 28:2255 (R6-515). 8/21/97, Response by Virginia High to [510-1] govt's response to motion to vacate sentence pursuant to 28:2255 (R6-516). 9/22/97, MOTION by George High for release on bond pending new evidence with brief in support (R3-519), also MOTION to vacate sentence pursuant to 28:2255 (R3-520).

MOTION by George High to disqualify Judge Robert L. vining, Jr. with brief in support. (R3-523). JUDGEMENT ENTERED on order denying [510-1] motion to vacate sentence pursuant to 28:2255 in favor of plaintiff USA & against defendant George High.(R3-525). 10/7/97, Certified copy of JUDGEMENT OF USCA affirming in part and reversing in part RE: [401-1], [398-1] appeal as to George High, Virginia High & Robert Ward. USCA dkt. 94-8151 #94-8230. (R3-534). 1/14/98, MOTION by Virginia High for bond time credit with brief in support. (R9-542). 2/3/98, GOVERNMENT MOTION TO DISMISS COUNTS and ORDER GRANTING same by Judge Robert Vining Jr. as to George High (4) count(s) 13s (R3-543). 2/3/98, GOVERNMENT MOTION TO DISMISS COUNTS and ORDER GRANTING same by Judge Robert L. Vining Jr. as to Virginia High (5)count(s) 13 (R6-544) 2/26/98, ORDER by Judge Robert L. Vining Jr. as to Virginia High DENYING [542-1] motion for bond time credit (treated as a brief in response to the motion to vacate by the court) the [514-1] motion to dismiss motion to vacate, set aside, or correct sentence by USA, DENYING [513-1] motion for appointment of counsel by Virginia high DENYING [510-1] motion to vacate sentence pursuant to 28:2255, DENYING [509-1] motion for new trial. (R6-547). 3/16/98, NOTICE OF APPEAL by Virginia High from [547-1) order denying motion to vacate [548-1] and judgement FILING FEE $105.00 (R6-550). ORDER by Judge Robert L. vining Jr. as to Virginia High [550-1] denying certification of appealability. (R6-554). 12/31/98, MOTION by George High, Virginia High for new trial based on newly discovered evidence, and for bond with brief in support (R6-559).

12/31/98, MOTION by George & Virginia High for appointment of counsel with brief in support. (R560). ORDER by Judge Robert L. Vining Jr. as to George & Virginia High, DENYING [559-1] motion for appointment of coulsel, DENYING [559-1] motion for new trial based on newly discovered evidence. DENYING [559-2] motion for bond. (R6-561). 1/29/99, Pro Se NOTICE OF APPEAL by George & Virginia High from [561-1] order of 1/5/99. (R6-563). 2/19/99, acknowledgement by USCA as to George & Virginia High RE: [563-1] notice of appeal. USCA dkt. no. 99-8169.

(ii) STATEMENT OF THE FACTS

On October 17, 1991, IRS agents William Silinski & Michael Scamid, drove around to the back of our house unannounced, armed, unenvited and open the door to our screened porch, knocked on the back door and upon being admitted and being seated in the breakfast room, he (agt. Silinski) read us our rights and proceeded to ask us question about our 88,89 and 90 tax returns. He asked us numerous questions and after about 2 hours of a lot of questions and very few answers he left us a list of items he wanted. On June 17, 1992, IRS agents David Jones, unknown negro female and agt. Silinski arrested Virginia high at the office of GEORGIA HOME IMPROVEMENT CO., INC., which was the first indictment. We posted a $100,000 bond and Virginia was released. On July 9, 1992, there was a second indictment which included George High, who was released on $100,000 bond. On July 27, 1992, between 5:30 and 6:00 agt. Silinski, Terry Sosbee, Shelia Whipple, unknown negro female agent and about 15-20 other federal agents exercuted a search and seizure at the residence of George & Virginia High,

Eric and Jenique High, GEORGIA HOME IMPROVEMENT CO., INC., and HIGH-FIVE LTD., seizing numerous items i.e. 3 computers, all computer disk, all records and 30+ boxes of files belonging to the above named cooperations, and as many from the residence of Eric and Jenique High. The agents also seized a briefcase containing the firearm charged in the indictment. The arrest of Virginia High was "done unlawfully, unreasonably and contrary to law", as guranteed by the fourth admendment of the United States Constitution. The search and seizure at the residence of Eric and Jenique High and GEORGIA HOME IMPROVEMENT CO., INC., was done "without cause, consent or warrant", as guranteed by the fourth admendment of the United States Constitution. The search and seizure was effected at the residence of George and Virginia High unreasonable and beyond the bounds. On December 10, 1992, there was a third indictment which included George and Virginia High and 13 others. The High's were charged on count # 1 (the drug count), and numerous other counts, and George High was charged with the "false" firearm counts. The High's pled not guilty. The trial began on September 21, 1993 and the High's were found guilty on October 13, 1993. On January 20, 1994 the defendants were sentenced to serve 97 months in federal prison. On March 28, 1994, the High's reported to prison and have been incarcerated since. Our fight for Justice and freedom began in earnest on that day, as we began an unending search for information to prove our innocence because we knew that we had been incarcerated "unjustly".

(iii) STANDARD OF REVIEW

a. Whether the District Court abused its discretion when it denied the defendant's motion for judgement of acquittal notwithstanding the verdict, or in the alternative for a new trial ??

b. Whether the District Court abused its discretion when it denied the defendant's motion for a new trial based on the government's violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 ??

SUMMARY OF THE ARGUMENT

In retrospect, the defendant's assert that the government's evidence was insufficient to convict George or Virginia High of conspiracy to possess and distribute cocaine of to participate in a money laundrying conspiracy, and the two (2) firearm charges were "Ludicrous and Fantistical", and the defendant's futher assert that the government only added those false firearm charges solely to buttress its weak case on the other counts. At best, the evidence showed that George & virginia High participated in structuring financial transaction under the law prior to Ratzlaff v. United States,_____U.S._____, 114 S.Ct. 655 (1994).

ARGUMENT AND CITATION OF AUTHORITY

1. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE DEFENDANTS MOTION FOR JUDGEMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT, OR IN THE ALTERNATIVE FOR A NEW TRIAL.

This Honorable Court, under UNITED STATES v. MARTINEZ, 763 F.2d 1297, 1312 says: There is no reported opinion determining the appropriate standard of review of an order granting a new trial in a criminal case. We hold that an abuse of discretion standard applies. A motion for a new trial is addressed to the sound discretion of the trial court, since Federal Rules of Criminal procedure 33, which governs new trial motions, permits the court to grant a new trial "in the interest of Justice".....in criminal cases where denial of a new trial motion is challanged, United States v. Rosso, 717 F.2d 545, 550 (11th Cir.1983).

[22-24] .....On a motion for judgement of acquittal, the court must view the evidence in the light most favorable to the verdict, and, under that light, determine whether the evidence is sufficient to support the verdict. Corbin, 734 F2d at 650. (citations omitted). If the court concludes that, "despite the abstratc sufficiency of the evidence to substain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occured, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury". Lincoln, 630 F.2d at 1319.

On December 10, 1992, a Grand Jury sitting in the Northern District of Georgia, Atlanta, Division, returned a second (3rd) superseding indictment naming George and Virginia High and 13 co-defendants in a 39 count indictment. (R1-89). George High was charged with count #3, 18 U.S.C. § 922(a)(6) False statement in acquiring a firearm. High was/is "factually innocent" of that count as his rights were restored when he got out of prison in in 1962. U.S. v. Sanders 844 F.Supp. 1407, 1409 Whether the defendant made false statement on ATF form 4473 in violations of 18 U.S.C. § 922(a)(6), Question 8(b) on form 4473 states. "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE:...A "yes" answer is not required if you have been pordoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occured, you are not prohibited from receiving or possessing any firearm)". (R6-559-4), statement of facts.

George High was charged with count # 9, 18 U.S.C. §§2, 921(3) and 922(g)(1). possession of a firearm by a convicted felon, in and effecting commerce. High was/is "factually innocent" of that count as his rights were restored in 1962 when he got out of prison. 18 U.S.C. § 921(a)(20), Defendant George High did not have a predicate crime punishable for a term exceeding one year, as defendants rights had been "restored" and his possession of firearm did not violate the law. (R559-4) Statement of facts. Also U.S. v. Hall 20 F.3d 1066.

The alleged predicate crime which was the basis for the firearm was in Colorado, and U.S. V. Sanders 844 F.Supp. 1407 was also Colorado (10th Cir.), and the indictment was dismissed. U.S. v. Hall 20 F.3d 1066 (10th Cir.), Mr. Hall's conviction was REVERSED. The mandate shall issue forthwith.

The aforementioned charges was the climax of an investigation that supposedly began: From a time unknown to the Grand Jury, but at least by in or about 1987.. (DC DKT. No. 1:92-CR-182 RLV). Said defendants first encounter in relation to any criminal investigation was on October 17, 1991, at about 9:00 A.M., when IRS criminal investigators William Silinski and Michael Scamid drove around to the back of our house, armed, unannounced, unenvited and read us our rights. (R19-6-8 and 10-14), Cross-examination by Att. Abbott. Abbott. Agt. Silinski asked us numerous questions and we answered very few and he left us a list of things that he wanted us to get for him. Agt. Silinski called us numerous times from October 17, 1991, and up until we hired Att. Abbott. Agt. Silinski was very insistant and adamant on more that one occasion that we give him the information that would incriminate us, and we refused,and 8 months till the day on June 17, 1992, IRS agents William Silinski, David Jones and an unknown negro female arrested Virginia High at the office of GEORGIA HOME IMPROMENT CO., INC., acting under claim of federal authority. The "armed agents" manacled Mrs. Mrs. High in front of her husband, her son (Eric High), and a client, after searching her. The arrest was "done unlawfully, unreasonable and contrary to law". Bivens . Six Unknown Fed. Narcotic Agents, 403 US 388, 29 L.ED. 2d 619, 91 S.Ct. 1999 (1971). Virginia posted a $100,000.00 and was released and that was the first indictment. the defendants have tried to get copies of the indictment which was the basis for the arrest, since July of 1992, but it seems to not exist, and on the Criminal Docket of George High, it shows

proceedings includes all events, with beginning date 7/9/92 44 Superseding indictment filed. On the Criminal Docket for Virgi- it shows: proceedings including all events, 7/9/92 44 Superse- dings indictment filed. There was no mention of arrest of Virgi- nia High at trial, the indictment, the PSI, the docket Sheet, nor was there any mention of the first indictment, as I have requested it on many occasions (R560-13), letters from me #,5, 8, 9, 10. Letters from bill to me pertaining to first indct. (R559-6) second paragraph. On July 9, 1992, George High was indicted on a superseding indictment, and our lawyer Michael Abbott called me at home and told me to be at the Federal Court- house at 10:30 A.M. (or therebouts) as I would be indicted. I was not arrested, and I think that they only arrested Virginia to try to force her to cooperate, but that was not to be.

A.

On July 27, 1992, at about 6:00 A.M. agt. Silinski, Shelia Whipple, Terry Sosebee, Unknown negro female (who arrested Virginia), and about 15-20 other federal agants, exercuted a search at the residence of George & Virginia High's, Eric and Jenique High, and the office of GEORGIA HOME IMPROVEMENT CO., INC., who also shared office space with HIGH-FIVE Ltd. and Eric L. High. (R559-7-9), (R18-229-233),(R19-3,4). Terry Sosebee testifying that they arrived between 6:00 and 7:00 in the morning. (R13-92- 96). and he was assigned to search the den like area, and on pages 94 thru 96, he talks about finding the briefcase and how when he first picked up the briefcase, Mrs. High advised him that it was her husband's briefcase, and he talks about searching the

briefcase and finding the firearm, various business cards, several banking cards, several different types of dates or address books. The prosecuter ask him if once he completed the search, did he turn the briefcase over to someone, he said Yes, to Agt Silinski. I made him aware of its existence and it was collected by the IRS as evidence. U.S. v. Allen 644 F.2d 749, 752 The government relies now upon a warrant to open the briefcase issued after the seizure. But the seizure of the briefcase remains unjustfied by any exception to the requirment of a valid warrant. (footnote omitted) Accord, Umited States v. Moore, 483 F.2d 1361 (9th Cir.1973). Reversed.

U.S. v. Bagley 899 F.2d 707, As part of an ongoing investigation, law enforcement officers arrested Bagley and acquired a locked briefcase from Bagley's home. Without obtaining a search warrant, the officers opened the briefcase and discovered two handguns inside. Bagley was later indicted as a felon in receipt and possession of firearms. Before trial on the indictment, Bagley moved to suppress the weapons claiming they were seized in a illegal search, and the district court granted his motion. The government then dismissed the indictment, and Bagley brought this motion for expunction and return of weapons. 708, Because the exclusionary rule is a deterrent to unlawful police conduct, Bagley received his fourth admendment remedy when the district courtsuppressed Bagley's weapons for trial purposes. Calandra, 414 U.S. at 347, 94 S.Ct. at 619.

UNITED STATES v. LAFERRERA 596 F.Supp. 362 (S.D. Fla. 1984). Defendant, charged with violating federal firearm laws, moved to suppress the firearms. The District Court, Paine, J., held that although state officers executing warrant to search defendant's premises for evidence for evidence relating to theft of electricity were justified in removing the weapons from the premises during the search there was no basis for retaining the weapons following search. (Motion granted).

Eric and Jenique lived in the apartment on the lower-level of the residence in question. The apartment had a seperate out side entrance, with two bedrooms, full bath, living/dining fire-place, kitchen w/sink, cabinets, ref. laundry room and it was completly furnished with their furniture. The agts. exercuted the search and seizure at the residence of Eric and Jenique High about 6:00 A.M. on July 27, 1992, without cause, consent or warrant. Agt. Silinski and about 8-10 other agents made Eric and Jenique go upstairs to the family room while they conducted the search. The search lasted about 4-5 hours and they seized hundred's of files belonging to Eric's Client's (he is a CPA), all of his tax files belonging to various client's, his computer and every disk on the premises. The negro female was also searching the apartment. They seized credit cards, address books, appointment books, and checkbooks belonging to Eric and Jenique High. Eric High did not offer any resistance because it had only been about a month ago when he saw IRS agents Silinski, David Jones and the negro female arrest his mother while they held he and his father at bay with their hands on their guns at all times, as he was now faced with those "perpetrators". The agents produced no warrant nor indicated that they had one, and they nither asked nor was granted consent to search. The agents also seized 15-20 cases of files belonging to HIGH'S REALTY, INC., and some items that belonged to GRACIA LIMITED., as HIGH'S REALTY, INC., had been closed since late January 1992. The agents also seized numerous items and files from the residence of George & Virginia High, and from the safe in the master bedroom. (R18-229-233) and

(R19-3,4). Also (R19-79-81), Virginia on direct examination by Michael Abbott explaining about the GRACIA LTD. seal and the corporation and lines 24, 25 page 80 and lines 1,2 and 3 on page 81 explains why the seal and other items were at her home opposed to the office, and Ms. High says. My office...I didn't have an office for HIGH REALTY OR GRACIA LIMITED. A lot or my records and everything was at my house at that time. (when they searched) [see] JONES v. UNITED STATES 362 US 257, 4 L Ed. 2d 697, 80 S.Ct. 725. Interest in property as requsite of accused's standing to raise question of Constitutionality of search and seizure. The defendants and Eric and Jenique High has standing as being "persons aggrieved by an unlawful search and seizure" who, under Rule 41(e) of the Federal Rules of Criminal Procedure, may move to suppress the use of evidence of anything obtained in a unlaw-search and seizure. (R1-67), (R1-69), (R1-78), (R4-83) (R4-55) (R4-266). ALDERMAN v. UNITED STATES 394 US 165, 22 L Ed 2d 176, 89 S Ct 961, [1,2] The exclusionary rule fashioned in Weeks v United States, 232 US 383 58 L Ed 652, 34 S Ct 341 (1914) and Mapp v Ohio, 367 US 643, 6 L Ed 2d 1081, S Ct 1684, 84 ALR2d 933 (1961), excludes from a criminal trial any evidence seized from the defendant in violation of his fourth admendment rights. Fruits of such evidence are excluded as well.

On July 27, 1992, while the search was in progress at the residence of Eric and Jenique High, and the residence of George and Virginia High, agt. Silinski told me that I needed to accom-pany some agents to the office because they had a search warrant for there also. Shelia Whipple followed me to the office and

when we arrived, there was already about 4-5 agents there, and the search began, and I heard her tell one of the agents that this was the office of High Realty, and I was in the back office and I told her that this was the office of GEORGIA HOME IMPROVEMENT CO, INC., and she made no responde. I got up and went to the office where she was and told her that this was the office of GEORGIA HOME IMPROVEMENT CO., INC., HIGH-FIVE LTD., and Eric High. I asked Shelia Whipple to look at the sign on the door or she could go to the management office down the hall and see whos office this is. I told her that HIGH'S REALTY had been out business over six months, and that their office was on Covington Hwy., and she told me to have a seat and that they knew what they were doing. They were going thru files and putting them in boxes, and agt. Silinski, the negro female and other agents came over about 1:00 - 2:00 P.M., and he (agt. Silinski) said they had finished searching the house. They started going thru files and I told him if the warrant was for HIGH REALTY, he was at the wrong place, and that this was the office of GEORGIA HOME IMPROVEMENT CO., INC., HIGH-FIVE LTD., AND Eric High, as he and the negro female was in that very office when they arrested Mrs. High about a month prior, and that he knew that High Realty was no more, because he had been to Real Estate Portfolio where Virginia had transferred after High Realty closed. He had also been to the office of HIGH REALTY on Covington Hwy, and they also seized a copy of the order revolking the licenses of George High and HIGH REALTY ON January 8, 1992. (R19-80-81) Mrs. High says: I didn't have an office for HIGH REALTY or GRACIA LIMITED at that time....

They seized 3 computers belonging to GEORGIA HOME IMPROVEMENT CO. INC., HIGH-FIVE LTD., and Eric High, and they seized every disk in the office. They took all of the checkbooks, all cancelled checks, stock certificates, personnel files, address books, appointment books, and all tax information belonging to all of the cooperations. They seized all of the 1st and 2nd mortgages that we held on various properties, and they seized the leases on all properties owned by HIGH-FIVE. They seized no less that 30 boxes of files. (R18-215) Bill Morrison ask Shelia Whipple how many boxes of files did she seize and she said 8 boxes. (R19-5) Agt. Silinski said they seized twenty fifteen to twenty boxes of files from HIGH REALTY.

BUMPER v NORTH CAROLINA 391 US 543, 20 L Ed 2d 797, 88 S Ct 1788, 802, Any idea that a search can be justified by what it turns up was long ago rejected in our constitution jurisprudence, "A search prosecuted in violation of the Constitution is not made lawful by what it brings to light...." Byers v United States, 273 US 28, 29, 71 L Ed 520, 522, 47 S Ct 248. See also United States v Di Re, 332 US 581, 595, 92 L Ed 210, 220, 68 S Ct 222; Henry v United Staes, 361 US 98, 103, 4 L Ed 2d 134, 139, 80 S Ct 168.

UNITED STATES v BANERMAN 552 F.2d 61,63 The law of standing to suppress material derives from the illegal search in the case of an offense where possession is an essential element has been envolving and is fully discussed in recent opinions of the court. United States v Galante, 547 F.2d 733, 736-38 (s Cir. 1976); United v Tortorello, Supra, at 812-13. These opinions establish that despite intimations of its mortality in Brown v United States, 411 U.s. 233, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973), Jones v. United States, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960), which grants automatic standing to those accused of the commission of a crime which requires proof of possession...

> ...As to actual standing, Jones v United States, Supra 362 U.S. at 267, 80 S.Ct. at 734, held that "anyone legitimately on the premises where a search occures may challange its legality.. when its fruits are proposed to be used against him". Mancusi v. Deforte, 392 U.S. 364, 368, 88 S.Ct. 2120, 2124, 20 L.Ed.2d 1154 (1968) held that the fourth admendment right does not depend on a property right in the invaded place "but upon whether the area was one which there was reasonable expectation of freedom from govermental intrusion".

B.

The trial began on September 21, 1993 (R9-12), with the prosecutor making a statement about count three and nine, the firearm counts and a search warrant being exercuted at the home of George and Virginia High, lines 7-16. (R9-27), lines 8-15, found gun during search and ATF revealed it was purchased 2/2/90 and High said he was not convicted felon. Evedince will show he was not pordoned. (R9-32) , lines 10-19, Bill Morrison says High does have a felony record, government found gun at High's residence. (R9-33) lines 10,11, He is a convicted felon in possession of firearm. On Sept. 23, 1993, (R11-4), lines 4-23, (In open Court), Mr. Moyer states that Mr. Morris said High is prepared to say he's a convicted felon, and Mr. Morrison and High agree. and Mr. Moye says he'll prepare the document. Now this was the second day of the trial.

When we came back from lunch I saw a man sitting outside the courtroom sitting on the bench, and he had on a grey uniform with black belt, black shoes, and other type equipment worn by prison guards and when I came in the courtroom Bill Morrison asked me if I saw the man sitting outside the courtroom and

I said yes and he said he was from the Colorado State Prison and he was going to testify that I had served time there, but he just got a call that he had an extreme emergency and needed to return to Colorado right away. Bill Morrison said that all the man was going to say was that I had served time in Colorado Prison, which I had. I told Bill Morrison that I was not pleading guilty to nothing and he assured me that Allen Moye would prepare a statement saying that I was a convicted felon and that was it and the man could get his plane. I told Bill that I would sign the statement, as he assured me that my rights had not been restored as per federal law and he swore that he would not lie to me because he was my "defense lawyer". Allen Moye prepared the stament saying: The defendant, George High is a convicted felon as alleged in counts three and nine of the indictment, and that was on Sept. 23 (or therebouts), and I told Bill Morrison that I was not pleased with re. to counts three and nine, but I signed it and I told Bill Morrison to give me a copy immediatly because I did not trust Allen Moye, but he told me that it had to be signed by The U.S. Attorney, Joe D. Whitley and we would get a copy then. The witness from Colorado left and did not testify.

On Monday September 27, 1993, Allen Moye called Terry Sosebee as a witness (R13-91-96), who says they arrived between 6:00 and 7:00 A.M., and he was assigned to search the den and when he picked up the briefcase Mrs. High told him that it was her husband's, and he searched it and found the firearm and other items. Terry Sosebee testified re: 18 USC § 922(g)(1),

convicted felon in possession of a firearm. Allen Moye called Marty Spiegleman as the next witness (R13-98-104) and he testified to 18 USC § 922(a)(6) False statement in acquiring a firearm, in and effecting commerce, and he said the firearm was purchased at Joe's loan office in Decatue, Ga., and he says he purchased the firearm from a co. in North Carolina (Interstate Commerce). The next witness he called was Luis Valez from BATF (R13-105-106), who testfied my legal firearm as per 18 USC § 921(3). The prosecutor was waving the firearm before the jury while all the witness were testifying. Luis Valez said he was able to fire it and found it to function as designed. On October 5, 1993 (R18-38,39) Lines 23-25, page 38 re. Statement by George High, page 39, lines 1-15, The prosecutor reads a statement stipulated between the United States, by Joe D. Whitley, U.S. Attorney, H. Allen Moye, George High and William Morrison as follows: The defendant, George High, is a convicted felon as alleged in count three and nine of the indictment. The defendant, George W. High, has not been pordoned or received any executive clemency from the conviction aforesaid. Allen Moye added the last part of that statement that was underlined after I signed it. I told Bill Morrison that Allen Moye had altered that statement after I signed it, and Bill Morrison said thats exactly what you signed almost two weeks ago and maybe you forgot. Allen Moye entered the stmt. into evidence and also Exhibit 34, a copy of HIgh's conviction that he got from the witness from Colorado who he "tampered with". (R18-176,77,78), prosecutor wants to question Shelia Whipple about other firearms found in the house during the search and

particularity one found in Mrs. High's purse, and Att. Abbott was adamant that the Judge does not allow that line of questioning. page 177, lines 9-12 Allen Moye states: "The others certainly are not charged, but that does not mean the weapons themselves and the fact of their location is not evidence, as to the drug conspiracy at least". He also states that it is not inadmissible evidence , lines 13,14. (R19-9,10), between court and counsel at the bench. Mr. Moye discussing a Bruton probelum because Mrs. High will testify and Mr. High wont. The Court: Lines 21-25 page 9, If I have a Bruton Probelum down the road I'll sever out George High probably. I probably won't sever out Virginia High. George said please convict me of the gun and let me go on the rest. We can try him on that pretty quick. Page 10, lines 4,5,6 Mr Moye: I don't want to have to retry George High. The Court: I am not going to worry about that. I doubt seriously we would have to retry anyone. (R20-119,120), lines 20-25 on page 119, prosecutor, Mr. High possessed the firearm and he purchased the firearm. Page 120, lines 1-3, its relatively strightforward. (R20-140), Bill Morrison talking about firearm. (R22-96,97), Allen Moye lines 22-25, page 96 about the guncounts and page 97 lines 1-15, Mr. High lied about his conviction, lines 10-15 And I submit to you, ladies and gentlemen, there's not one true verdict with regard to count 3 and 9, and that is that Mr. High is guilty as charged. He lied to the gun dealer about his conviction. It does not matter how old the conviction is, and he was forbidden to possess that firearm because of that conviction. (R22-108, 109), line 25 page 108, As much as this case was bungled accor-

ding to Mr. Rosen, I submit to you, ladies and gentlemen, there's not a government agent in this courtroom that would do something like lying to assure an outcome...

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE DEFENDANT'S MOTION FOR A NEW TRIAL BASED ON THE GOVERNMENT'S VIOLATION OF BRADY v. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194.

Because both of these issues are intricately entwined, I would like to argue them togather: In U.S. v. NORIEGA 117 F3d 1206, 1220, 21 The Supreme Court long has held that"

> 'deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice"!" Demarco v. United States, 928 F.2d 1074, 1076 (11 Cir.1991) (quoting Giglo v. United States, 404 U.S. 150, 153, 92 S.Ct. 763, 765 31 L.Ed.2d 104 (1972), quoting Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 341, 79 L.Ed. 791 (1935). As a result, "due process is violated when the prosecutor, although not soliciting false evidence from a government witness, allows it to stand uncorrected when it appears" United States v. Sanfilippo, 564 F.2d 176, 178 (5th Cir.1977) (citing Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)). The violation arises even if the "false testimony goes only to the credibility of the witness...." Id. "Where either [the government solicits false or misleading testimony or fails to correct it], the falsehood is deemed to be material [and thus, to warrant a new trial] 'if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury"

The prosecutor "in Collusion" with Bill Morrison Suppressed evidence under Brady, when they chose to "tamper with the witness" from Colorado, who was prepared to testify that High's civil rights had been restored and he was not a convicted felon.

The prosecutor futher violated Brady when he "knowingly and with malice" called Terry Sosbee, Marty Spieglman and Luis Valez to testify about the legal firearm, when he well knew that High's rights had been restored in 1962. U.S. v. ARNOLD 117 F.3d 1308 (11th Cir. 1997), WE conclude that the district court abused its discretion in denying the appellants' motion for a new trial because the appellants have demonstrated a Brady Violation. See United States v. Cox, 995 F.2d 1041, 1044 (11th Cir.1993). The government possessed evidence , including impeachment evidence, favorable to the defense; defendants did not possess the evidence nor could have obtained it with reasonable diligence; the prosecution suppressed the favorable evidence; and had the evidence been disclosed to the defense, a reasonable probability exists that the trial outcome would have been different, i.e. the evidence was material. Mills v. Singletary, 63 F.3d 999, 1014 (11th Cir.1995), cert. denied---U.S.---,116 S.Ct. 1837, 134 L.Ed.2d 940 (1996); United States v. Blasco, 702 F.2d 1315, 1327 (11th Cir.), cert. denied, 464 U.S. 914, 104 S.Ct. 275, 78 L.Ed.2d 256 (1983). A "reasonable probability" is one sufficient to undermine confidence in the trial outcome. United States v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375,3383, 87 L.Ed.2d 481 (1985). The standard of materiality is less stringent, however, when the prosecutor knowingly uses perjured testimony or fail to correct testimony he or she learns to be false. United States v. Alzate, 47 F.3d 1103, 1110 (11th Cir.1995). In that instance, the falsehood is deemed material if a "reasonable likelihood" exists that the false testimony could have could have effected the jury's

verdict. Alzate, 47 F.3d at 110; Blasco, 702 F.2d at 1328. The district court clearly abused its discretion when it denied the defendants motion under Federal Rules of Criminal Procedures Rule 33, [see] UNITED STATES v. LINCOLN 630 F.2d 1313, [6,7] ... The trial court has wide discretion in deciding whether to grant a new trial "in the interest of justice". Corresponding to the district court's broad discretion is the limited scope of our review. (R19-10), line 4, Mr. Moyer: I DON'T WANT TO HAVE TO RETRY GEORGE HIGH. The prosecutor don't want to retry George High because under Federal Rules of Evidence 403, 404(b), 28 U.S.C.A. he presented to the jury and the court, evidence of the defendants prior similar acts for the purpose of proving bad character, which was prohibited, UNITED STATES v. RUSSO 717 F.2d 545 [11-13]. i.e. (1) Exhibit 191 Briefcase (R13-94). (2) Exhibit 4 firearm & hoster (R13-95). (3) Exhibit 191-A address book (R13-96). (4) Exhibit 5 & 5-A document from co. where dealer purchased firearm (R13-101-102). (5) "altered" stipulation signed by George High (R18-38,39). (6) Exhibit 34 certified copy of George High's conviction (R18-39), and the numerous times the prosecutor told the jury and the court that High was a convicted felon, that High was a lier and that High was guilty i.e. (R9-27), (R9-32), (R9-33), (R13-91-96), (R13-98-104), (R13-105-106), (R18-38,39), (R18-176,77,78), (R19-9,10), (R20-140), (R22-96,97), (R22-108,109). UNITED STATES v. HUDDLESTON 802 F.2d 874, 876-88 .our focus will center on whether the trial court abused its discretion in permitting the government to present evidence of apellant's prior

misconduct. [1,2] Generally under Fed.R.Evid. 404(b) evidence of a criminal defendant's prior misconduct is inadmissible during the prosecution's case in chief for the porpose of showing the accused's bad character or criminal propensity. United States v. Ailstock, 546 F.2d 1285, 1289 (6th Cir.1976). [3-4]...One of the prerequisites for admission of other crimes evidence is clear and convincing proof of the similar offense. (citations omitted). Adopting the clear and convincing proof standard in this circuit, we hold that the government failed to meet that standard. The government contends that the admission of similar acts evidence was harmless error. We disagree. ....See Chapman v. State of California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). In United States v. Manafzadeh, 592 F.2d 81 (2d Cir.1979) the court ruled that other crime evidence was admitted improperly since it afforded the jury the opportunity to draw the impermissible inference that because the defendant had apperently acted unlawfully on another occasion, he must have committed the unlawful acts charged in this case. [5] ....The plain error doctrine (Fed.R.Crim.P. 52(b) permits reversal despite lack of objection if there has been Miscarriage of justice. Wilson v. Attway, 757 F.2d 1227 (11th Cir.1985); Higgins v. Hicks Co., 756 F.2d 681 8th Cir.1985). .....this evidence was more prejudical than probative, we find that the admission was an abuse of discretion. Accordingly, the district court's verdict is reversed and remanded.

U.S.v. ESSICK 935 F.2d. 28, 29, 30, 31 Tommy Franklin Essick Appeals his conviction for possession of firearm by an ex-felon, in violation of 18 U.S.C. § 922(g)(1). Because we find that the government failed to prove an essential element of the crime, we reverse the judgement of conviction. [2] ..in every case of [922(g)(1) prosecution, the court must refer to the laws of the jurisdiction in which such proported predicate conviction occured. This inquiry requires an analysis of whether and to what extent the jurisdiction in which the prior conviction occured "restores the civil rights" of ex-felons. [4] A knottier question is the allocation of the burden of proof. The government, of course, always bares the burden of proving each element of a crime beyond a reasonable doubt. The government contends that

> all it need do to prove a prior "conviction" in a § 922(g)(1) trial is to show that the defendant had once been convicted of a felony. The restoration of firearm and other civil rights, the argument continues, is properly a matter for defense. We disagree. Reversed.

(R19-36), Lines 13-16, Bill Morrison: As the final portion of my argument, I would again renue my motion to sever not only the gun counts, but also to sever George High.....U.S. v.

Dockery, 955 F.2d 50, 53, 54, 56, Defendant was convicted in the United States District Court for the District of Columbia of drug trafficking and of being felon in possession of firearm. On Appeal, The Court of Appeals, Harry T. Edwards, Circuit Judge, held that failure to sever firearm counts fron drug counts was abuse of discretion. Vacated and Remanded. Fed. Rules Cr. Proc. Rule 14, 18 U.S.C.A. II. Analysis A. ...We find that, on the facts of this case, the refusal to sever was an abuse of discretion. When trying an ex-felon count togather with other counts, the trial judge must "proceed with caution" to avoid undue prejudice. Daniel, 770 F.2d at 1118. Because the standard was not followed in this case, we vacate Dockery's conviction. On the facts of this case, we are left with the firm conviction that"[t]he proper balance between judical economy and the prejudicial effects of evidence of prior conviction was not struck in this instance". Panzavecchia v. Wainright, 658 F.2d 337, 341 (5th Cir. Unit B Oct. 1981)(granting writ of habeas corpus; trial enfected by ex-felon counts). [3] ..Here, the government or the trial court averted to the conviction on six seperate occasions.... We are mindful that joined trials may, in appropriate circumstances, conserve judicial resources. To that end, the government and trial court may exercise their discretion to try ex-felon counts with other counts in a single trial. But, when doing so, the government and trial court must avoid undue prejudice prejudice to the defendant....In this case, aduqate precautions were not taken and we therefore find an abuse of discretion..

The defendants incorporates by refererence, (R6-559) Motion for a new trial based on newly discovered evidence, and for bond with brief in support , in its entirety, and it shall be taken and considered a part of this "brief" the same as if it were fully set out herein.

The defendants incorporates by refererence, (R-60) Motion for appointment of counsel with brief in support, in its entirity, and it shall be taken and considered a part of this "brief" the same as if it were fully set out herein.

CONCLUSION

The defendant's earnestly and humbly implore this Honorable Court to grant George and Virginia High a judgement of acquittal notwithstanding the verdict, or in the alternative for a new trial, based on "outrageous govermental conduct" and "serious prosecuto rial misconduct". The Constitutional rights of the defendants was violated on numerous occasions and there was "repetitious, flagrant, and longstanding" misconduct in this case. The government withheld vast amounts of exculpatory evidence, and allowed perjured testimony to stand uncorrected on more that one occasion before the grand jury and the petit jury. The government went outside its own regulations to "target" the defendants. The defendants futher assert that the conduct of law enforcement agents was so "outrageous" that due process principles should have absolutely "barred" the government from envoking judicial process to obtain a conviction, and the prosecutor failed to turn over all discovery to which the defendant's were entitled. Moreover, the government mislead "this" Honorable Court to such an extent as to perpetrate a fraud upon the Court.

July 13, 1999

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA	*	
Appellee,	*	
v.	*	
GEORGE HIGH & VIRGINIA HIGH	*	
Appellants	*	USCA No. 98-8429 & 99-8169-JJ

CERTIFICATE OF COMPLIANCE

The Appellant's certify that they are in compliance with Rule 32(a)(7)(B) and (C), and this brief contains 29 pages and 766 lines.

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

Appellee,

v. USCA No. 98-8249 & 998169-JJ

GEORGE HIGH & VIRGINIA HIGH

Appellants

CERTIFICATE OF SERVICE

THIS IT TO CERTIFY that I have this date served a copy of the within and forgoing Brief upon the following parties by depositing the same in the United States Mail with sufficient postage affixed to ensure delivery addressed to:

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This the 13th Day of July 1999

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