

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA, :
Plaintiff-Appellee, :
v. : APPEAL Nos: 98-8249-JJ
: 99-8169-JJ
GEORGE HIGH & VIRGINIA C. HIGH, :
Defendant-Appellant. : USDC Nos.: 1:92-cr-182-4
: 1:92-cr-182-5
:

EMERGENCY MOTION FOR BOND PENDING APPEAL

COMES NOW the Appellants, George and Virginia C. High, Pro Se, and moves this Honorable court to enter an order releasing the defendants immediately on a Personal Recognizance bond, pending disposition of the Appeal in this case. The Transcript of the proceedings below was filed in this Court on August 12, 1999.

In support of this motion, Appellants would show the following:

COURSE OF PRIOR PROCEEDINGS

George and Virginia C. High, Defendants-Appellants, were jointly indicted with thirteen other do-defendants on December 10, 1992, in a second superseding indictment, on counts charging drug distribution and laundering of monies derived from drug sales. (R1-89; R4-89). Pleas of not guilty were entered at arraignment. (R1-146; R4-110)

On the government's motion, the case was declared to be a complex case. (R1-106, 166; R4-106, 166). This case was severed for trial, and the High's were tried together with each other and with co-defendants Alex Gracia and Robert Ward, in September, 1993, before the Hon. Robert L. Vining, Jr., United States District Judge.

After a trial that lasted several weeks, the jury returned verdicts finding the High's guilty of participating in a conspiracy to distribute cocaine (count 1); finding them guilty of participating in a

conspiracy to launder drug proceeds, to structure currency transaction and to defraud the United States (count 13); finding George High guilty of weapons violations (counts 3 and 9); finding the High's guilty of separate 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; R5-349).

The High's were each sentenced to terms of incarceration totaling 97 months. (R2-394; R5-390). Based upon the intervening decision of the Supreme Court in *Ratzlaf v. United States*, 510 U.S. 135, 114 S.Ct. 655 (1994), the district court declined to impose sentence on those counts charging Title 31 violations, and instead offered each defendant the opportunity to file a motion to set aside the convictions. (R19-12; R20-9).

After the imposition of sentence, separate motions for new trial was filed by the High's and those motions were later granted as to the substantive structuring offenses. (R2-353, 401; R-465; R5-393; 398; R6-466) Timely notices of appeals were filed, and this court affirmed in part, but reversed the convictions of the High's on count thirteen. *United States v. High*, 117 F.3d 464 (11th Cir. 1997). The government subsequently dismissed count thirteen. (R-543; R6-544).

MEMORANDUM OF LAW

A. The High's Request For Release is Ripe For Review By This Court.

Fed. R. App. P. 9(b) governs a defendant's request to this Court for release on bond after he has been convicted. That rule "contemplate[s] that the initial determination of whether a convicted defendant is to be released pending the appeal is to be made by the District court." Fed.R.App.P.9(b), Advisory Committee Notes; accord United States v. Provenzano, 605 F.2d 85, 91 (3d Cir. 1979) ("Federal Rules

of Appellate Procedure 9(b) now explicitly provides what the Bail Reform Act contemplated: that an application for release after a judgement of conviction be made in the first instance to the district court, notwithstanding that the jurisdiction of the Court of Appeals has already attached by virtue of the appeal from the judgement of conviction,") As the Provenzano court explained, the trial court is in a superior position, at least in the first instance, "to gather and sift the pertinent information necessary to the correct determination of motions for release pending appeal." 605 F.2d at 91. Only after the district court refuses release may the defendant seek release by this Court. Id.

(R5-404) MOTION by Virginia C. High for bond pending appeal with brief in support. (pt) [Entry date 02/07/94].

(R5-413) ORDER as to Virginia C. High DENYING motion for bond pending appeal [404-1] by Judge Robert L. Vining Jr. [entry date 02/23/94].

(R2-407) MOTION by defendant George High for bond pending appeal with brief in support. [Entry date 02/15/94]. (R2-412) ORDER DENYING motion for bond pending appeal [407-1] as to George High (4) by Judge Robert L. Vining Jr. [entry date 02/23/94]. (R6-559) MOTION by defendant George High, defendant Virginia c. High for..... bond with brief in support. [entry date 12/21/98]. (R6-561)..... DENYING [559-1] motion for bond by Virginia C. High, George High [entry date 01/20/99]...

In this case the High's moved for release in the district court on at least two occasions, in relations to this appeal. Therefore the High's request for release is ripe for review by this court.

B. George And Virginia C. High Is Entitled to Bond Pending Appeal.

The Bail Reform Act, 18 U.S.C. § 3143(b) Release or detention pending appeal by defendant.--The judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds---

- (1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142(b) or (c); and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the judicial officer makes such findings, he shall order the release of the person in accordance with the provisions of section 3142 (b) or (c).

The leading Eleventh Circuit decision on the subject of release pending appeal is. U.S. v. Giancola, 754 F.2d 898, 901; (11th Cir. 1985) United States v. Miller, 753 F.2d 19 (3d Cir.1985). [3].....

- (4) that if the substantial question is determined favorably to the defendant on appeal, that descision is likely to result in reversal or an order for a new trial of all counts on which imprisonment has been imposed.

We also observe that under the 1984 Act , the burden of establishing these factors is on the convicted defendant.

GEORGE & VIRGINIA HIGH IS NO FLIGHT RISK OR DANGER TO THE COMMUNITY

Virginia C. High, was released on bond at first indictment, on June 17, 1992 and remained on bond until she self-surrendered on March 28, 1994. During that time Virginia High continued to work as a Real Estate agent selling and leasing residential and commercial properties and lived at 4791 Thompson Mill rd. Lithonia, Ga. 30058. While on bond she was allowed to travel to the Bahamas, Atlantic City, Nashville, Mississippi, New Orleans and to Washington, Ga.. Virginia C. High was born in Washington, Ga., and moved to Atlanta in 1965 to attend College. Virginia has two sisters in Atlanta, also two sons and their wives, 4 grandchildren, neices, nephews, a host of friends and a husband (George High) of 31 years. Since Virginia High self-surrendered on March 28, 1994 she was furloughed transferred from Alderson W. Virginia to Butner NC. in Nov. of 1994. On May 11, 1998 Virginia was given another furlough to travel by greyhound from Butner, Tex. to Marianna, Fl.. Within the last week, Virginia has been approved for a social furlough which she may elect to take any-time between now and June of 2000. Virginia C. High is no flight risk or danger to the community.

George High, was released on bond at the superseding indictment on July 9, 1992 and remained on bond until March 28, 1994 when he self-surrendered. George High was a Real Estate agent/broker since 1984 and also operated Georgia Home Improvement Co. since 1977. While on bond, George High also traveled to the Bahamas, Atlantic City, Nashville, Mississippi, New Orleans, and Washington, Ga.. George High was born in Atlanta in 1939 and has numerous relatives in the metro area i.e. mother, two sisters, two brothers, two sons and their wives, four grand childrens, many neices, nephews, aunts, uncles and

a host of friends. Since George High self-surrendered on March 28, 1994, he was given a furlough transfer from Ft. Dix, NJ. on May 25, 1999 to Atlanta (via Delta). On Nov. 12, 1999. George High's father passed and he was granted a three day and two night furlough to Atlanta to attend the funeral and visit relatives. High left Jesup, Ga. at 7:00 A.M. on November 18, 1999 and returned at 6:15 P.M. on November 20, 1999. George High is no flight risk or danger to the community.

However, let us refer to the records to see what was the court's and the government's position on the bond issue. The following transpired on October 13, 1993, after the guilty verdict. (R22-181,82)

THE COURT: I'M GOING TO LEAVE MR. WARD AND MR. AND MRS. HIGH ON BAIL UNTIL SENTENCING. MR. MOYE: FOR THE RECORD, BASED UPON TITLE 18, UNITED STATES CODE, SECTION 31.3(A0(2) AND BASED UPON THEIR CONVICTION ON COUNT 1 OF THE INDICTMENT, I WOULD AT LEAST MOVE THAT MR. AND MRS. HIGH BE TAKEN INTO CUSTODY. I BELIVE THE LAW IS MANDATORY. THE COURT: OH, I DON'T THINK THEY WILL FLEE. I DON'T THINK THEY WILL BE A DANGER TO THE COMMUNITY. I UNDERSTAND THE NATURE OF THE CONVICTION.....SO I'M GOING TO LEAVE THEM ON BAIL UNTIL

SENTENCING. In the BRIEF FOR APPELLEE, filed in this Court on the 27th day of July, 1999, (see page 9, last paragraph line three)....

It is not hard to understand the basis for the district court's conclusion. First, the district judge was the same judge who had presided over the trial, and was familiar with the trial records.....

Seemingly, the government and the court is on one accord that:

"GEORGE & VIRGINIA HIGH IS NO FLIGHT RISK OR DANGER TO THE COMMUNITY."

SUBSTANTIAL QUESTION OF LAW OR FACT

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 pardoned 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 occurred, 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 IMPROVEMENT 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 bail 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 thereabouts) 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 prosecutor 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 unjustified by any exception to the requirment of a valid warrant. (footnote omitted) Accord, United 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 & Jenique High lived in the apartment on the lower-level of the residence in question. The apartment had a separate outside entrance, with two bedrooms, full bath, living/dining fireplace, kitchen w/sink, cabinets, ref. laundry room and it was completely furnished with their furniture. The agts. executed 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 neither 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 of 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 requisite 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 unlawful 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 accompany 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 response. 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 whose 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 revoking 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 than 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 States, 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 involving 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 occurs may challenge 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 amendment 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 governmental intrusion".

B.

The trial began on September 21, 1993 (R9-12), with the prosecutor making a statement about count three and nine, the fire-arm counts and a search warrant being executed 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. Evidence will show he was not pardoned. (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. Moyer 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 statement 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 thereabouts), 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 immediately 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 Decatur, 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 testified 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 pardoned 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.

The prosecutor violated Brady when he "knowingly and with malice" called Terry Sosbee, Marty Spiegelman 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 & holster (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 liar 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 appellant'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 purpose 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 apparently 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 prejudicial 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 renew 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 from 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 together 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 judicial 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 effected by ex-felon counts). [3] ..Here, the government or the trial court averted to the conviction on six separate 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 to the defendant....In this case, adequate precautions were not taken and we therefore find an abuse of discretion..

The government with held all of the evidence under Brady, because they had a Confidential informer named Kyle Henry, who had been working with them, and (R18-71), lines 5-16, SO A FRIEND OF MINE WHO WAS AN ATTORNEY BASICALLY TOLD ME I NEEDED TO CONTACT AN ATTORNEY TO COVER MYSELF. Kyle Henry talks about receiving monies from Ms. Whipple (IRS). (R18-70), line 16, THIS CONTRACT WAS SIGNED ON JUNE 8, 1992. (R18-134), line 11, 12, NOW, IN ADDITIONAL TO THE \$50,000 THAT YOU GOT, YOU ALSO RECEIVED ABOUT \$18,000 IN REIMBURSEMENT FOR EXPENSES? (R18-132-133), Kyle Henry under oath testifying about being advised by lawyer that he needed something in writing from IRS. He stated that he had the attorney to contact Shelia Whipple about more money. (R18-133), lines 8-10, NOW DID YOUR ATTORNEY NEGOTIATE WHAT WAS REFERRED TO AS THE CONTRACT YOU HAVE WITH THE INTERNAL REVENUE SERVICE? YES, SIR. (R18-74) lines 9-15, the IRS will pay Kyle Henry 10% of net taxes and penalties as result of information and total amount not to exceed one million. (R18-136), lines 22-25, other part of compensation that he had in writing: I BELIVE IT IS 25 PERCENT OF THE (R18-137) FIRST MILLION DOLLARS WORTH OF RECOVERY THEY MAY MAKE; IS THAT FAIR? A. THAT IS FAIR. THEN YOU'RE ENTITLED TO 10 PERCENT OF ANYTHING OVER A MILLION DOLLARS. (R22-53), lines 5-17, BUT MR.KYLE'S DEAL IS HE GETS--AND YOU HAVE HIS CONTRACT. HE HAS TWO CONTRACTS. HE HAS ONE CONTRACT WITH THE INTERNAL REVENUE SERVICE THAT SAYS HE GETS 10 PERCENT OF ALL TAXES THAT ARE COLLECTED BY THE INTERNAL REVENUE SERVICE ON EVERYBODY. NOT JUST ON CAR DEALS, ON EVERYBODY ON EVERYTHING. THEN HE HAS A SECOND DEAL WITH THE U.S. ATTORNEYS OFFICE THAT SAYS HE GETS 25 PERCENT OF EVERYTHING THAT THE GOVERNMENT GETS. NOW, NOT JUST CARS. HE GETS 25 PERCENT OF SIMS JINK'S

HOUSE. 25 PERCENT OF DAVID WALLACE'S HOUSE. PLUS HE GOT HIS REIMBURSEMENTS. HE HAS EVERYTHING ELSE. THIS IS NOT THE FUNCTION OF LAW ENFORCEMENT. YOU KNOW, THIS IS NOT THE WAY WE DO THINGS.

United States v. Carcaise, 763 f.2d 1328, 1332 (11th Cir. 1985).

Conviction on testimony of a paid informant must be rejected when the informant is promised payment of a specified sum to convict a specific suspect. Williamson v. United States, 311 F.2d 441 (5th Cir.1962). In Williamson, the Fifth Circuit refused to sanction "a contingent fee agreement to produce evidence against particular named defendants as to a crime yet committed." Williamson v. United States at 444.

On June 17, 1992, William Silinski, David Jones and a negro female (all IRS agents), arrested Virginia C. High at the office of Georgia Home Improvement Co. Inc., which was the first indictment. It had only been 9 days since the government "cut-a-deal" with Kyle Henry and his attorney for one million plus. The IRS also seized in excess of one million in Real Estate, \$12,000 from Virginia High's bank account and they also "waylaid" an insurance check in the amount of \$15,000 to Virginia High. All of this happend within a very short time of the Kyle Henry deal. The government seized the million plus from the High's so they could pay Kyle Henry. The IRS and the UNITED STATES ATTORNEYS OFFICE wanted George and Virginia high to pay all of their "snichers" and on January 20, 1994, after the High's were sentenced and went home, William A. Morrison, at the behest of, and acting in collusion with Allen Moye, called George High and told him that Allen Moye wanted him to sign over aand satisfy a certain note and security deed. The note and security deed was pertain to a property that George High had sold to Elizabeth and Wallace Wortham in 1984 and had took back a second mortgage. NOW George and Virginia high had saw Elizabeth

and Wallace Wortham in the courtroom at sentencing and asked them why they were there and Elazibeth said they were suppose to meet someone at the bankrupcy court and assumed that was the courtroom and when they came in they saw the High's. William Morrison attempted to "shake-me-down" and extort \$12,000 from George High (the note), because allen moye wanted me to pay the Worthams for their sniching. William Morrison told me that if I gave up the \$12,000 note and worked with the government he felt certain that Allen Moye would not oppose us remaining on bail pending appeal. I asked William Morrison if he would put that in writing and he said "aint no way." George High adamantly refused to satisfy the note, which was seized during the "gestapo raid" at our home and office on July 27, 1992. I never saw the note and security deed again and the Worthams has not made ,any payments since October 1993, and George and Virginia high was not allowed to remain on bail pending appeal, although Judge Vining allowed the High's to remain on bail after sentencing (R22-181-182)

I'M GOING TO LEAVE MR. WARD AND MR. AND MRS. HIGH ON BAIL UNTIL SENTENCING....OH, I DON'T THINK THEY WILL FLEE. I DON'T THINK THEY WILL BE A DANGER TO THE COMMUNITY. I UNDERSTAND THE NATURE OF THE CONVICT-ION. At sentencing on January 20, 1994 (sentencing transcript) page 13, THE COURT: I WILL LET MR. HIGH VOLUNTARY SURRENDER.

(R5-404) MOTION by Virginia High for bond pending appeal 2/7/94.

(R5-413) ORDER DENYING BOND for Viriginis High 2/23/94.

(R2-407) MOTION by George High for bond pending appeal 2/15/94.

(R2-412) ORDER DENYING BOND for George High 2/23/91. Because George High refused to pay the \$12,000 extortion to Allen moye VIA William Morrison, the High's went stright to jail and did not pass go.

Elizabeth Wortham had been a real estate agent with HIGH'S realty, Inc. at one time and Wallace Wortham worked for Georgia Home Improvement Co., Inc. as a handy may.


This appeal is not for purpose of delay, as the Highs have been incarcerated for almost 6 years and will be eligible for placement in a halfway house in less than ten months and then house arrest.

CONCLUSION

The defendants assert that the government only added the false firearm counts solely to buttress its weak case on the other counts. The constitutional rights were 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 false testimony to stand on numerous occasions before the grand jury and the petite jury. The defendants further assert that the conduct of law enforcement agents was so "outrageous" that due process principles should have absolutely "barred" the government from evoking judicial process to obtain a conviction. The Appellants, George and Virginia High, has established all the elements necessary for release pending appeal, and have RAISED A SUBSTANTIAL QUESTION OF LAW OR FACT, which goes right to the heart of their appeal. For these reasons, the appellants respectfully requests that their motion for BOND PENDING APPEAL be granted.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.
Executed on this the 15, day of December, 1999.

Respectfully submitted,


George High, Pro Se.
2650 U.S. Highway 301 So.
Jesup, Ga. 31599
Reg. No. 43141-019

26.

Virginia C. High
43083-019 SEM-B
P.O. Box 7006
Marianna, FL. 32447-7006

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA

Appellee,

v.

GEORGE HIGH & VIRGINIA HIGH

Appellants

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APPEAL NO. 99-8169-JJ
98-8429

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

United States of America

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

Robert L. Ward, Jr., Co-Defendant

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

GEORGE HIGH & VIRGINIA C. HIGH,

Appellants.

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APPEAL Nos.: 99-8169-JJ
98-8429-JJ

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this date served a copy of the within and foregoing EMERGENCY MOTION FOR BOND PENDING APPEAL upon the following parties by depositing the same in the United States Mail with sufficient postage affixed to ensure delivery addressed to:

H. Allen Moye, ASAU
400 U.S. Courthouse ✓
75 Spring Street, S.W.
Atlanta, Georgia 30303

Virginia C. High
43083-019 SEM-B
P.O. Box 7006
Marianna, FL. 32447-7006

Amy Levine Weil, ASAU
400 U.S. Courthouse ✓
75 Spring Street, S.W.
Atlanta, Georgia 30303

This the 15th day of December 1999

George High
George High, Pro Se litigant