IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

DAVID GARLAND ATWOOD, II PLAINTIFF

V. CIVIL ACTION NO.1:12-CV-168-SA-DAS

JAMES JACKSON DEFENDANT

ORDER

Now before the Court is Plaintiff Atwood's Motion for the Issuance of a Subpoena [281] to permit inspection and photography of a non-party's residence. The Plaintiff also raised a concern with the Court about the timing of a trial witness subpoena for Mike Chaney.

As to the subpoena to permit inspection, the Plaintiff did not raise this request at the final pre-trial conference. The Plaintiff now raises this request at the eleventh hour before trial. The motion is wholly devoid of any reason or rationale regarding the relevance of the requested inspection and photographs and how they may potentially relate to the remaining substantive issues of the case. In addition, the owner of the residence is not a party to this action, nor is he listed as a witness. However, if the appropriate foundation is laid at trial, the Plaintiff will be permitted to testify in the narrative, and to question other witnesses, as to first-hand knowledge of the location, the particularities of the place, distances, and view, and be permitted to utilize sketches or other admitted exhibits to otherwise describe the location subject to cross-examination.

In response to a previous *ore tenus* motion by the Plaintiff, the Court permitted the issuance of a trial witness subpoena for Mike Chaney. The Plaintiff has now informed the Court that he is concerned, given the short length of time before trial, that he will not have adequate time to serve the subpoena. In order to allow as much time as possible for the appearance of the

witness, the Court is willing to take Chaney's testimony out-of-time, at any point during trial that is practicable.

For these reasons, the Plaintiff's Motion for the Issuance of Subpoena [281 to permit inspection is DENIED.

All of the issues contained within Plaintiff's other Motions for Subpoenas [274, 282] were addressed at the final pre-trial conference, and the relevant subpoenas were issued rendering these motions MOOT.

Finally, Plaintiff's *ore tenus* motion for a trial witness subpoena for Mike Chaney was GRANTED by a separate text order appearing on the docket in this case.

SO ORDERED on this, the 2nd day of March, 2016.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE