

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2022GS2401428

**RECEIVED**  
FEB 28 2024  
SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Detavious Cunningham,

Appellant.

EXPLANATION OF APPEAL

On October 31, 2023, Defendant plead guilty to a trafficking in cocaine base second offense for a negotiated 16-year sentence.

On November 2, 2023, Defendant moved for reconsideration of the Court's treatment of the sentence as a second offense. Defendant argued that the Court misinterpreted S.C. Code Ann. § 44-53-470 based on his 2010 conviction on 2007-GS-24-01107.

The Court overruled this motion to reconsider. Defendant appeals his sentence and ruling on the motion to reconsider.

s/ Tristan Shaffer  
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CUNNINGHAM v. State  
THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
CASE No. 2022GS2401428

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FEB 28 2024  
SC Court of Appeals

Detavius Cunningham Appellant,  
v.  
The state of South Carolina Respondent,

Prior History: Appeal From Greenwood  
County Court of General Sessions,  
Presiding Judge Frank R. Addy Jr. from  
8th Circuit Court.

### Core Terms

No traffic stop Search and seizure illegal  
Search vehicle crack cocaine trafficking  
Second offense first offense Chain of Custody  
enhancement ten years ineffective assistance  
counsel grams probable cause resentencing  
lesser included offense

### Case Summary

#### Procedural Posture

Appellant appeals guilty plea conviction in  
Greenwood County Court, convicting me to a  
term of 16 years.

### Overview

Appellant was convicted unlawful for second  
offense of trafficking in crack cocaine when I  
never was convicted of first offense 28 U.S.C.S §  
2254 and U.S. Const. XIV

### [HN1] Cognizable Issues, Questions of State Law:

The federal habeas remedy may only  
be invoked to redress the harm caused  
those persons held in state custody  
in violation of the Constitution or laws  
or treaties of the United State.  
28 U.S.C.S § 2254 (a) It is not the  
province of a federal habeas court  
to reexamine state-court  
determinations on state-law  
question.

### [HN2] Defendant's Rights, Right to Due Process:

A criminal statute is invalid under  
the Due Process Clause if it fails to  
give a person of ordinary intelligence  
fair notice that his contemplated  
conduct is forbidden.

Sentencing provisions may also violate  
due process if they do not afford fair  
notice of the penalty that applies to  
the forbidden conduct. Ambiguities as  
to the offense is considered a second  
or subsequent offense if prior to  
his conviction of the offense, the  
offender has at any time been  
convicted under this article or  
under any state or federal statute  
relating to... marijuana...

## (1) EXPLANATION OF APPEALS:

Appellant states that this whole ordeal came about because officers with the Greenwood city Police Department responded to a call of shot being fired. It was not a traffic stopper violation. On September 16, 2022 officers with the Greenwood city police department approach my truck which is tan in color (brown), saying shot were fired and that somebody was in a tan truck. Officers arrived on the scene and as I was sitting in my truck outside of my apartment, truck not running. While I was sitting in the truck cause I just pulled up there. Two officers went to the passenger side of the truck and one came to the driver side and Capt Harabon open the door of my truck willingly, which he ask me did I hear any shots cause they recieved a call saying so and that I matched the description, white T-shirt, blue jean shorts and dreads, which partially of my shirt was white and jean shorts. That's when I stepped out of my truck and closed my door and consent to a pat down search of my person. Showing the officer I didn't have anything on me. That's when the officer said ok step back over here by my truck while Detective Boyter and Sgt. Vaughn search my truck. Mind you I never detain or placed under arrest if I match the description, nor did I give consent for my truck to be search when we did a pat down search.

### (1) Search and Seizure, Exclusionary Rule:

The exclusionary rule is a judicially created remedy designed to safeguard U.S. Const. amend. IV rights generally and not a personal constitutional right of the party aggrieved.

The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the U.S. Const. amend. IV rights of the party seeking to invoke the rule were violated by police conduct.

(2) Search and Seizure, Probable Cause  
The Supreme Court of the United States has reaffirmed the totality-of-the-circumstances analysis that traditionally has informed probable-cause determinations under Fourth Amendment.

(3) § 30:11 Search of motor vehicles,  
States a search incident to arrest exception doctrine does not allow law enforcement officers to conduct a warrantless search of a arrestee's automobile after the arrestee has been handcuff or otherwise prevented from regaining access to the car.

(1.) With that being said, my constitution right was violated on behalf of what the Fourth Amendment states, the right of the people to be secure in their person, house, papers, and effects against unreasonable search and seizures shall not be violated. Also a affidavit was written on my behalf of this shooting incident indicating I had nothing to do with anything that happen. And on behalf of the affidavit anything found upon the illegal search and seizure should be excluded upon the fruit of the poisonous tree Doctrine.

And exclude officers from going beyond the scope of exceeding pat down search that was given. This is also on body cam footages that has been edited a slight bit. 47.92 grams of crack cocaine was found in my truck.

### (III) Chain of Custody: Authentication,

But when drug analysis Ashley Lyles get the drug evidence its only weigh 40.51 grams of cocaine base. So whoever handle the evidences on the way to the analysis 7.41 grams was missing or the analysis made an error in weighing the the drugs, or should I be saying evidence has been tampered with, A photo was taken and visible on the scale of "one whole circle and a smaller piece of rocklike substance in a plastic bag" weighing 47.92 grams of crack cocaine.

(The mere fact that evidence is sealed upon presentation for testing does not, in itself, establish a sufficient chain of custody. Evidence is still required as to how the item was obtained and how it was handle to ensure that it is, in fact, what it is purported to be. However, the chain of custody need be established only as far as practicable, and every person handing the evidence need not be identified in all cases.)

Dep't of Soc. Servs. v. Cochran, 364 S.C. 621, 629, 614 S.E. 2d. 642, 646 (2005).

State v. Hatcher, 384 S.C. 372, 681 S.E. 2d. 925 (Ct. App. 2009).

whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case. In examining issues regarding the chain of custody, a mere suggestion that substitution could possible have occurred is not enough to establish a break in the chain of custody. It is unnecessary that the police account for 'every-to-hand-transfer' of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial. To expect the prosecuting authority to produce every possible individual who may have had fleeting contact with the evidence would cause unnecessary logistical problem concerns chain of custody.

"Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." State v. Carter, 344 S.C. 419, 424, 544, S.E. 2d. 835, 837 (2001). "In applying this rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handle the substance was not established at least as far as practicable.

Chain of Custody: While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence, that is evidence that is unique and identifiable, the establishment of a strict chain of custody is not required. If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely question and is in a substantially unchanged condition.

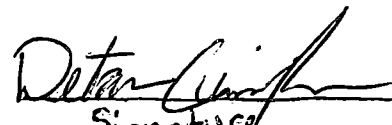
After all of this I'm informing to you on behalf of my argument on my appeal is because I mention to my original attorney Colie Stancil on why I'm being charge with second offense trafficking when I never had a first offense. He stated that it got enhance from my pervious charge back in 2007 which was a P, w, I. D marijuana. I told Colie Stancil that the charge happen over ten years ago, Colie Stancil never check into the fact of this matter, all cause he was confident that he was certainly right cause he's my attorney. I've also filed paperwork against Mr. Colie Stancil on different issues like Ineffective Assistance Counsel. I have more then one paper of this matter, which one letter went to investigator Jimmy Powers 8th Circuit Public Defenders office, The second one to the South Carolina Bar Association and thrid one went to Department of Justice Civil Rights Division, JS Department of Justice, Civil Rights Division, 950 Pennsylvania, Avenue, N.W. Office of Assistant General Main Washington D.C. I mail my letters out on October 8, 2023 and my court date was coming up on October 30, 2023, which I didn't go till the 31<sup>st</sup> of October cause Judge Addy was not present. And I never recieve a response back because I got sentenced and shipped to South Carolina Department of Corrections. Now while all this is going on here come Tristan Shaffer and Chelsea McNeill "out of the same 8th Circuit Public Defender office". With all the Co hearsay along with Colie Stancil to talk me into taking 16 years cause I was going to trial if I didn't take the time. These two attorney's was forced my way when neither one of them were appointed to me or my case, nor did I recieve a notice saying I had new representation. So I was forced to go along with what was going on, on behalf of my life. Solicitor Andrew Hodges purpose that he'll drop all my charges if I pleaded to second offense trafficking 16 years.

So I said, ok if you gone do that why not give me a bond then? Mr. Hodges laughed and said "oh I can't let him out," when I'm entitled to a bond. And this is coming from Mr. Shaffer that Mr. Hodges stated this to him to tell me, like what he was saying was right. To be technical I pose to had went back up for my bond in November cause my 6 months would be up then. It wasn't mention though, because Solicitor Hodges didn't waste any time putting me on the trial docket all cause he thinks he had a case on trying me for trafficking. He also stated to Mr. Stencil that he want me bad for some reason (Prosecution misconduct) and I haven't did anything to him. Mr. Stencil state this to me in front of Mr. Shaffer cause he as well made a remark towards Mr. Hodges that he was making a big deal about this whole case if you ask him. That's when I pled guilty to the 10 years and filed for a Motion To Reconsider, which leded me to telling Mr. Shaffer that my charge was enhanced to second offense trafficking on behalf of my previous charge. I inform him of the time span of how long it has to be for a charge to be enhanced. (A defendant should not have been as a second offender under the crack cocaine statute which provides an enhance sentence for a second offender or one whose first conviction was related to narcotic drugs where his second offender status was based on prior convictions for disturbing marijuana, which is not a narcotic drug as defined by § 44-53-110, § 44-53-470, which provides that an offense is a second offense if the defendant had previously been convicted under a statute relating to marijuana, inapplicable since § 44-53-375 is both more recent and more specific. *Rainey v. State* (S.C. 1992) 307 S.C. 150, 414 S.E. 2d 131). "I had a P.W. I.D crack cocaine back in 2006 well over 10 years!" Now Mr. Shaffer looked into it on his laptop right then and there. That's when Mr. Shaffer was like ooh, indicating that he had found the proper form or statute on what I had just given him on enhancement that I'm probably right and he's wrong because he was reading from a federal guideline and not state guidelines. That's when Mr. Shaffer (who is not my assigned attorney) showed me a printout on what he was reading which was S.C. Code Ann. § 44-53-470. I have never been convicted of trafficking up until now and I don't have no prior trafficking conviction on my recorded. "Adjustment and Enhancement, Criminal History, S.C. Code § 17-25-50 (1976) provides that in determining the number of offenses for purpose of imposition of sentence, the court shall treat as one offense any number of offense which have been committed as times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute

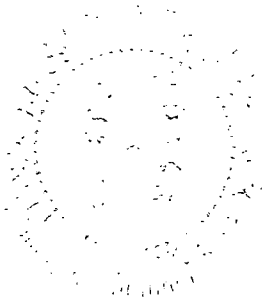
Separate and distinct offense. § 44-53-370 Prohibited acts A; penalties Disposition of previous marijuana charges was a bond forfeiture, not a conviction. For purpose of enhanced sentencing statute, and thus defendant's attorney erred in failing to challenge trial judge's decision to treat marijuana bond forfeiture as a first offense when sentencing defendant for conviction of trafficking in and transportation of cocaine.

Scott v. State (S.C. 1999) 334 S.C. 248, 513 S.E.2d. 100. Criminal Law 1997] § 44-53-375, Possession, manufacture and trafficking of ..., state that possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentence pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. I have been wrongfully convicted and indicted for second offense of trafficking due to the lack of interest in the statute enhancement and the wrong term of knowledge of South Carolina Criminal Laws.

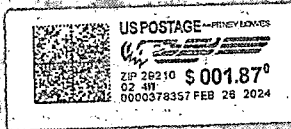
In regards of this issue, this is so yours truthfully that I hope you take my complaint in consideration and over turn my sentence of 16 years 85%. This is so appreciated to be heard and able to forward such a complaint on my appeal.

  
Signature

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 19th DAY OF January, 2024  
Kanzora Robinson  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY Commission expires: 8/5/2024



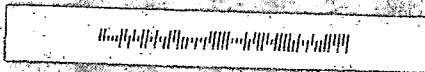
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