

RECEIVED

JUN 17 2013

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

GENERAL COUNSEL

APPEAL FROM ADMINISTRATIVE LAW COURT  
SHERLEY C. ROBINSON JUDGE  
CASE No. : 12-ALJ-04-0377-AP

RECEIVED

MAR 13 2014

ANDREW PLUMMER  
V.  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

APPELLANT

SC Court of Appeals

RESPONDENT

RECORD ON APPEAL

ANDREW PLUMMER  
TYGER RIVER C.I.  
SPECIAL MANAGEMENT UNIT  
ROOM 20  
200 PRISON RD  
ENUREE SC 29335  
APPELLANT ON RECORD

CHRISTOPHER FLOREAN  
4444 BROAD RIVER RD  
COLUMBIA, SC 29221  
RESPONDENT ON RECORD

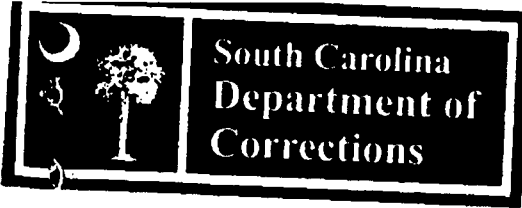
## INDEX

FACE PAGE OF TRANSCRIPT	1
CERTIFICATE OF SERVICE	2
INMATE GRIEVANCE STEP 1 (EXHIBIT)	3
INMATE GRIEVANCE STEP 2 (EXHIBIT)	4
DISCIPLINARY REPORT AND HEARING RECORD	5
PICTURE OF APPELLANT ANDREW PLUMMER	6
PICTURE OF RESPONDENT OFC. STOKES	7
INCIDENT REPORT	8
SCDC DISCIPLINARY HEARING <del>RECORD</del> PROCEDURE PAGE 1 JANUARY 31, 2012 (EXHIBIT)	9
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 2 JANUARY 31, 2012 (EXHIBIT)	10
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 3 JANUARY 31, 2012 (EXHIBIT)	11
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 4 JANUARY 31, 2012 (EXHIBIT)	12
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 5 JANUARY 31, 2012 (EXHIBIT)	13
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 1 FEBRUARY 7, 2012 (EXHIBIT)	14
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 2 FEBRUARY 7, 2012 (EXHIBIT)	15
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 3 FEBRUARY 7, 2012 (EXHIBIT)	16
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 4 FEBRUARY 7, 2012 (EXHIBIT)	17
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 5 FEBRUARY 7, 2012 (EXHIBIT)	18
SCDC DISCIPLINARY HEARING PROCEDURE PAGE 6 FEBRUARY 7, 2012 (EXHIBIT)	19
ADMINISTRATIVE LAW JUDGE COURT CERTIFICATION (EXHIBIT)	20
APPELLANTS PROPOSED ORDER GRANTING MOTION FOR JUDGMENT (EXHIBIT)	21
APPELLANTS OBJECTIONS TO TRANSCRIPT FILED BY RESPONDENTS ON DATE SEPTEMBER 21, 2012 (EXHIBIT)	22
APPELLANTS AMENDED BRIEF (EXHIBIT)	23
AFFIDAVIT (EXHIBIT)	24
APPELLANTS MOTION FOR JUDGMENT (EXHIBIT)	25
APPELLANTS AMENDED BRIEF (EXHIBIT)	26
APPELLANTS REPLY BRIEF (EXHIBIT)	27
REQUEST TO STIFF MEMBER (EXHIBIT)	28
DESIGNATION OF MATTER SIGNED MARCH 13, 2013 AND INITIAL BRIEF	29
	30
	31

CERTIFICATE OF COUNSEL

I ANDREW PLUMMER HEREBY CERTIFY THAT THE RECORD ON APPEAL CONTAINS ALL MATERIAL PROPOSED TO BE INCLUDED BY APPELLANT AND NOT ANY OTHER MATERIAL.

By Andrew Plummer 6-11-13



~~23~~

1-30

1

NIKKI R. HALEY, Governor  
WILLIAM R. BYARS, JR., Director

September 21, 2012

The Honorable Shirley C. Robinson  
South Carolina Administrative Law Court  
Edgar A. Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, SC 29201

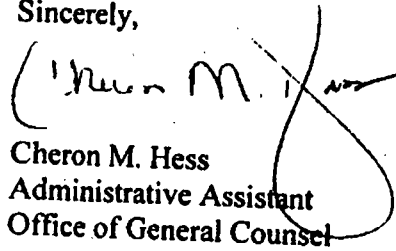
RE: Inmate Andrew Plummer, #299191 vs. SCDC  
Docket No. 12-ALJ-04-0377-AP

Dear Judge Robinson:

Find enclosed a copy of Respondent's Record consisting of Inmate Grievance KRCI 208-12, Disciplinary Report and Hearing Record, Disciplinary Transcript, and Incident Report, as well as, other supporting documents in the above referenced matter.

Please file the originals and return a clocked-in copy of the cover letter to me in the enclosed self-addressed envelope.

Sincerely,



Cheron M. Hess  
Administrative Assistant  
Office of General Counsel

Enclosures

cc: Inmate Andrew Plummer, #299191

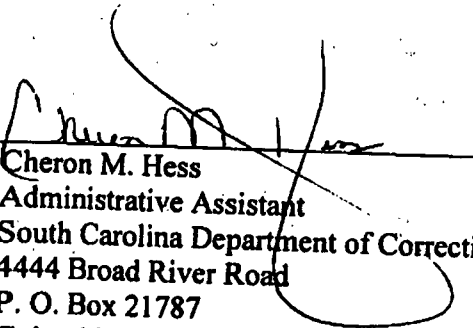
2

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same via mail to his/her last known address as follows:

**Inmate Andrew Plummer, #299191  
Tyger River Correctional Institution**

**Columbia, South Carolina  
September 21, 2012**



**Cheron M. Hess  
Administrative Assistant  
South Carolina Department of Corrections  
4444 Broad River Road  
P. O. Box 21787  
Columbia, SC 29221-1787  
(803) 896-3922**



SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

WLE: 3/

STEP 2

INMATE NAME: Andrew W Plummer  
SCDC NUMBER: 299191  
INSTITUTION: Jasper River MAR 23 2012  
HOUSING UNIT: \_\_\_\_\_  
WORK ASSIGNMENT: \_\_\_\_\_

Office Use Only  
Grievance No. KICCT-0205  
Code: General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc. Hear. POI #42  
Class. 110: 2/17/12  
Date Received 3-16-12  
IGC Initials CT

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Records of Anderson Co, who Deprived my steps appeal to change BOP case 42 (1) THE DIO DID NOT FOLLOW THE DUE DILIGENCE BY WAITING  
SIX MONTHS TO BE PRESENT DURING HEARING (OFFICERS AND 2 JUDGES) HE WAS CHARGED IN STATE OF THE INCIDENT AND WITNESSES STATED THE DIO DID NOT  
SHOW UP TO HEARING ON 1-31-12 AND ONLY WHO WITNESSES STATED AT HEARING. DIO STATED DID NOT HAVE ON THE 12-14 FROM WHY WITNESSES AND PHYSICAL DOCUMENTS WERE EXCLUDED  
FROM HEARING ON 1-31-12 HEARING. THE REASON FOR A GRIEVANCE DEFENSE AT HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151  
AT 1979, SUCH DROPPED AFTER A FIRM HEARING. THE REASON FOR A GRIEVANCE DEFENSE AT HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151  
OF WHAT HAPPENED WITH WITNESSES AND PHYSICAL DOCUMENTS WERE EXCLUDED FROM HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151  
POLICY OP-22.14. 13) WITNESSES STATED THE DIO DID NOT PROVIDE A HEARING RECORD OF THE HEARING. DIO STATED DID NOT HAVE ON THE 12-14 FROM WHY WITNESSES AND PHYSICAL DOCUMENTS  
WERE EXCLUDED FROM HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151. DIO STATED VIOLATED GRIEVANCE DUE PROCESS AND HEARING  
RECORDS AND FIVE WITNESSES WERE EXCLUDED FROM HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151. DIO STATED VIOLATED GRIEVANCE DUE PROCESS  
AND HEARING RECORDS AND FIVE WITNESSES WERE EXCLUDED FROM HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151. DIO STATED VIOLATED GRIEVANCE  
DUE PROCESS AND HEARING RECORDS AND FIVE WITNESSES WERE EXCLUDED FROM HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151. DIO STATED VIOLATED  
GRIEVANCE DUE PROCESS AND HEARING RECORDS AND FIVE WITNESSES WERE EXCLUDED FROM HEARING AND VIOLATED DUE PROCESS RIGHTS WITNESSES IMPEACHED IN STATE OF DOCUMENT 418 0151.  
(3) DIO VIOLATED OP-22.14-15, 7-15, 7-12 - AS OFC STOKES VERSION OF OCCURRENCE RECORDED BY DIO ON 1-31-12 WAS FALSE AND CONTRADICTED BY OFC HANDY ON 2-2-12 AS THESE  
WAS TWO SEPARATE INCIDENTS (SEE EXTENSION APPROVAL) THE DIO WAS MANDATED TO OVERTAKE OFC STOKES AS TO WHAT WAS RECORDED FROM OFC HANDY'S VERBAL TESTIMONY AS  
OFC STOKES SAID THAT OFC STOKES HAD NO INVOLVEMENT IN INCIDENT SUCH WAS A FALSE STATEMENT, AND OFC STOKES HAD A PRISON POLICY VIOLATION. DIO VIOLATED PRISON POLICY OP-22.14-  
HAVE REVEALED THAT OFC STOKES LIED ON HIS INCIDENT REPORT, SUCH IS A FALSE STATEMENT, AND OFC STOKES HAD A PRISON POLICY VIOLATION. DIO VIOLATED PRISON POLICY OP-22.14-  
15.3, AS GRIEVANCE REQUESTOR SIX WITNESSES AND ONLY ONE WITNESSED AND DIO DID NOT WRITE A WRITTEN REPORT WHY THE OTHER FIVE WITNESSES WERE EXCLUDED,  
WITH THE ABOVE-MENTIONED THE WRITING DECISION WAS PREJUDICIAL AND BIAS AND NOT IN COMPLIANCE WITH PRISON SENT POLICY IN THE GROUNDS MANDATED TO BE FOLLOWED IN  
WOLF V. THE BOARD OF THE CHARGE OF 901 CASE 42 SHOULD HAVE BEEN REVERSED DROPPED AND CLOSED  
and all occurrences and privileges restored/reinstated.  
(4) DIO DID NOT WRITE ON 12-14 FROM THE HEARING TAP NUMBER, START OF FINISH TIME OR END TIME WHICH  
IS MANDATED BY OP-22.14-12.13, ALSO GRIEVANCE DID NOT HAVE NOTICE OF THE DIO TAP WHICH WAS REQUIRED PRIOR TO THE 15 DAY EXPIRATION

Grievant Signature \_\_\_\_\_ Date 3-12-12

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

The documentation provided indicates that the evidence presented was sufficient to support the conviction of Assault and/or battery of an SCD Employee or other Government Employee, Volunteer, or Contract Employee with Means/and/or Intent to Kill or Injure (801) on January 31, 2012, under SCDC Policy OP-22.14, Inmate Disciplinary System, dated September 1, 2009, and the sanction(s) imposed, which included the loss of 80 days accrued good time, were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received twenty-four (24) hour notice prior to the hearing, you were afforded due process rights, as required, and the offense was classified and heard in a timely manner.

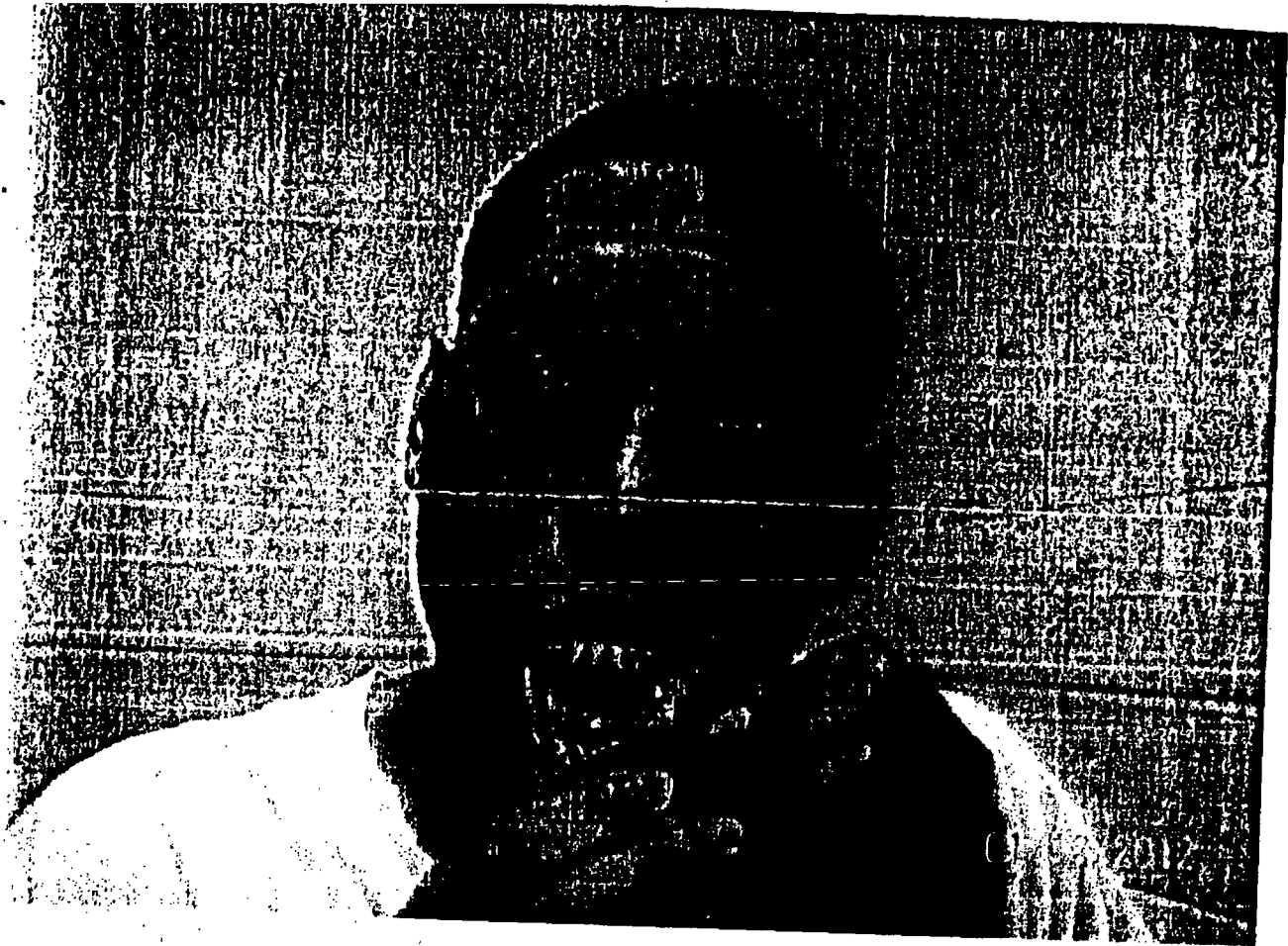
Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Signature \_\_\_\_\_ Date 5/2/12

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature \_\_\_\_\_ Date \_\_\_\_\_  
IGC Signature \_\_\_\_\_ Date \_\_\_\_\_



*Brady*



*Grady*

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

01-12-08

124

Institution/Center: KCC CI

Date of Report: 1-12-12

Reporting Official: Mark Stokes 047850 Time of Report: 6:40 pm APPROX

Location of Incident: OAK-B Date of Incident: 1-12-12

Inmate(s)/Resident: SCDC# Age Race Sex Employee(s) Involved: Time of Incident: 3:55 pm APPROX

4

1. Andrew Plummer 299191 B M 1.

2. 2.

3. 3.

4. SMUS 4.

5. 5.

On the above date and approximate time: I ofc Mark Stokes (047850) was feeding the OAK-B wing at cell # 63 inmate Andrew Plummer (299191) walked out of his cell, I ofc M. Stokes gave inmate Andrew Plummer several directives to step back into his cell. Inmate Andrew Plummer then became verbally aggressive, he continued to refuse all directives to return to his cell he then came at me in a threatening manner with closed fists. I ofc M. Stokes administered a two to three second burst of chemical munitions to the facial area of inmate Andrew Plummer. I/M A. Plummer came at me with closed fists striking me in the face. Inmate A. Plummer ran down stairs, 1st Responders was activated, Inmate A. Plummer was restrained and taken to SMU. Inmate Andrew Plummer (299191) was identified by his SCDC id card and charged with 801 assault and battery of SCDC employee with means or intent to kill or injure.  
Signature: [Signature]

Evidence: Photos taken JAN 13 2012

Witness(es):

Supervisor's Comments: Forward to Major Seward

Signature: [Signature] Title: LT Date/Time: 1-12-12 7:00 pm

Major / Responsible Authority: [Signature]

[Signature] with 801

Signature: [Signature] Title: [Signature] Date: 1/12/12

STG Related - Refer to STG Committee		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
This Incident is DRUG related		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
<u>NM</u>	<u>128</u>	<u>Y/T</u>
Action Taken		
<input type="checkbox"/> Informal Resolution	<u>1/13</u>	
<input type="checkbox"/> Administrative Resolution		
<input checked="" type="checkbox"/> Refer to Disciplinary Hearing		
<u>8/6/2014 580</u>		

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD

Case#: 42 Inmate Name: Plummer, Andrew SCDC#: 299191  
Living Area: SMU5 Job: NA Custody: NA  
Offense Date: 1/12/12 Offense Time: 3:55 AM Institution: Kershaw

Offense Description: 801 Assault and Battery of an SCDC employee with means to Kill or injure  
Charging Officer/Employee: Mark Stokes (CBI) Title: Officer  
INMATE NOTIFICATION: YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE. YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT.

**INMATE WAIVERS:**  
 I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING  
 I DO NOT WANT TO BE PRESENT AT MY HEARING  
 I DO WANT MY ACCUSER PRESENT AT THE HEARING  
 I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING  
 I WAIVE MY RIGHT TO A HEARING  
 SMU/SEGREGATION ONLY Armstrong  
 I WANT A COUNSEL SUBSTITUTE  
 I DO NOT WANT A COUNSEL SUBSTITUTE  
Date & Time Notified: 1/15/12 7:44 AM By (Print): Sgt. Allah Brown  
Inmate Signature: Andrew Plummer SCDC#: 299191 Date: 1/19/12

**HEARING INFORMATION:**

Hearing Date: <u>1-31-12</u>	Hearing Time: <u>9:30 am</u>	Tape:	Side:	Start:	End:
------------------------------	------------------------------	-------	-------	--------	------

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING; (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE; IF ANY (3) WITNESSES, (4) DOCUMENTATION, OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING; OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING  
Message left on 1-24-12 @ 12:30 am (Stokes) TV  
" " " 1-31-12 @ 9:00 am (Brady) Extension Needed

OFFENSE CODES	<u>801</u>			
INMATE PLEA (G, NG, None)	<u>NG</u>			
FINDINGS (G, NG, DS)	<u>G</u>			

IF GUILTY, EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT: (A) ADMISSION OF GUILT; (B) OFFICER'S REPORT; (C) WITNESS TESTIMONY; (D) OTHER. EXPLAIN IN DETAIL: Written & verbal testi- many of Stokes & the verbal testimony of Brady plus pictures

HEARING LENGTH: 11 (MINUTES)  
SANCTIONS: 8/6/2014 580  
Loss of Privileges (Days):  
• Property (Days)  
• Canteen (Days) 154F360=514  
• Other None (Days) 154F360=514  
• Disciplinary Detention (Days): 180-26=154  
Reprimand:  
Extra Duty:  
Visit Suspension Thru:  
Cell Restriction (Days):  
Loss of Good Time (days): 80  
Restitution: \$  
Pending Medical Cost of Stokes  
SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED: 1st offense of 801.

CREDIT FOR PHD TIME SERVED? YES NO IF YES, DAYS 26  
DATE INMATE PLACED IN PHD 1/12/12  
INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT: [Signature] DATE: 2-7-12  
HEARING OFFICER (PRINT NAME): [Signature]  
APPROVED/REVERSE/MODIFY [Signature] Warden REASON

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.  
White - Institutional Record  
Golden Rod - Inmate (Service of Disciplinary Hearing Disposition)  
Cunary - Inmate (Service of Disciplinary Report)  
Pink - Central Prison  
\*Note: When there is restitution, a copy of this form should be forwarded to Financial Accounting.  
SCDC 19-69 (Rev. May 2007)

7

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY HEARING PROCEDURE**  
DOCKET No.: 12-ALJ-04-0377-AP      GRIEVANCE No.: KRCI 208-12  
INMATE NAME: Andrew Plummer      SCDC No.: 299191  
INSTITUTION: Kershaw Correctional Institution  
DATE: January 31, 2012  
CHARGE: 801-Assault and Battery of an SCDC Employee with Means to Kill or Injure

1 DHO: The purpose of this hearing is to treat the matter before me, excuse me, with  
2 fundamental fairness and arrive at a just decision. All parties must conduct themselves  
3 properly. Failure to do so will result in removal. State your name and number for the  
4 record, sir.

5 I/M: Plummer. Oh, Andrew Plummer, 29...299191.

6 DHO: You're appearing before the Kershaw Correctional Institution Disciplinary  
7 Hearing being recorded on January 31<sup>st</sup>, 2012, at approximately 8:52 a.m. I'm Mrs.  
8 Sellers. Inmate Plummer is being represented by Counsel Substitute Armstrong. Mr.  
9 Armstrong, are you ready to proceed, sir?

10 C/S: Yes ma'am.

11 DHO: I will now read for the record Incident Report 01 12 08, which is dated January  
12 the 12<sup>th</sup>, 2012; 3:55 p.m., approximate; the Reporting Official is Mark Stokes, 047850;  
13 Location: Oak-B; and it reads: Officer Mark Stokes, 047850, was feeding the Oak-B  
14 Wing at Cell 63. Inmate Andre Plummer, 299191, walked out of his cell. I, Officer M.  
15 Stokes, gave Inmate Andre Plummer several directives to step back into his cell. Inmate  
16 Andrew Plummer then became verbally aggressive. He continued to refuse all directives  
17 to return to his cell. He then came at me in threatening manner with...with closed fists.

**DHO: Disciplinary Hearing Officer**

**I/M: Inmate**

**OFC: Accuser**

**C/S: Counsel Substitute**

10

18 I, Officer M. Stokes administered a two to three second burst of chemical munition to the  
19 facial area of Inmate Andre Plummer. Inmate A. Plummer came out me with closed fists,  
20 striking me in the face. Inmate A. Plummer ran downstairs. First Responders was  
21 activated. Inmate A. Plummer was restrained and taken to SMU. Inmate Andre  
22 Plummer, 299191, was identified by his SCDC ID Card and charged with 801-Assault  
23 and Battery of SCDC Employee with Means or Intent to Kill or Injure. You were served  
24 this offense on January the 19<sup>th</sup>, 2012, at approximately 7:44 p.m. You were served by  
25 Sergeant Allah Brown. On this offense, sir, how do you plead?

26 I/M: Not guilty.

27 DHO: Do you have any witnesses or any evidence, Mr. Armstrong?

28 C/S: Yes ma'am. He had several questions for Officer Stokes, but he will state

29 that...that he is not guilty of this infraction and he also stated that it didn't occur the way

30 it's written on the 19-29A Form. He said, in fact, that he thought that Officer Stokes

31 assaulted him.

32 DHO: Okay. Tell me your side of the story, Plummer and speak (inaudible) for me.

33 I/M: On January 12<sup>th</sup>, 2012, Officer Stokes along with Officer Brady and kitchen  
34 workers were passing out bag lunches, 'cause the Unit was on lockdown for the past  
35 seven (7) days. When they got to my cell, 63, which is the cell before the last to get bag  
36 lunches, Officer Stokes handed my cellmate one (1) bag lunch then went to Cell 64 and  
37 handed them the last two (2) bag lunches. I then stated to the kitchen workers that I had  
38 no bag lunch and Officer Brady authorized kitchen workers to give me a bag lunch and  
39 the kitchen workers threw the bag lunch up from the bottom tier to me. After I got the  
40 bag lunch, Officer Stokes grabbed my arm and told me to go to my cell and I asked him

11

41 not to grab me and that I was going to my room. Officer Brady was walking and talking  
42 to me while...until I got to my room. Officer Stokes then reach over Officer Brady and  
43 hit me with...hit me with the mace can closed in his fists. Busted my lip, then...then  
44 reached over Brady and started spraying. Brady was pulling me out of the cell. Officer  
45 Stokes, while Brady was holding both my arms began punching me repeatedly. Officer  
46 Brady let me go and I walked downstairs then out the dorm to the yard where Sergeant  
47 Goodwin came out and put handcuffs on me while...while I was struggling to breathe  
48 from the gas. Pictures were taken...I was taken up to the Holding Cell by Officer  
49 Bright...Sergeant Bright and pictures were taken of my lip, which was bleeding from  
50 Sergeant, um, Sanders and that's what took place.

51 DHO: Okay.

52 I/M: And I had asked for Officer Brady to, um...

53 DHO: I'll contact him in just a minute.

54 I/M: Okay.

55 DHO: Officer Stokes, is your report true, sir?

56 OFC: Yes ma'am.

57 DHO: Would you like to make any additional statements?

58 OFC: No ma'am.

59 DHO: Was Officer Brady present when this incident occurred?

60 OFC: Yes ma'am.

61 DHO: Okay. Um, you didn't mention him on your Incident Report. Is there a reason  
62 why?

63 OFC: No ma'am.

- 64 DHO: When the, um, incident occurred, what did Brady take part in or did he take part  
65 in anything?
- 66 OFC: Uh, not really anything. He was, uh, just helping me get the bags out.
- 67 DHO: Okay. Ms. Arm...
- 68 OFC: (inaudible).
- 69 DHO: Go ahead, I'm sorry. Did you say something after you said, "The bags out"?
- 70 OFC: No ma'am. He just helped me get the bags out.
- 71 DHO: Okay. Mr. Armstrong has some questions for you.
- 72 C/S: Officer Stokes, one of the concerns that the inmate has is, he's statin' that if
- 73 Brady was involved in any way in the incident, he should've been on the Incident Report.
- 74 Secondly, he said that you stated that you gassed him and there's no account on how
- 75 much gas used or anything like that and he seen that as really being a problem in
- 76 reference to this charge. But we also, gonna...we have requested Officer Brady to be
- 77 present at the ne...in the next go 'round.
- 78 OFC: So, you're saying that there's no, uh, reading recording of how much gas I used?
- 79 C/S: No sir.
- 80 DHO: The report states: I, Officer Stokes, administered a two or three second burst of  
81 chemical munition to the facial area. A Use of Force Report was done, correct?
- 82 OFC: Yes ma'am.
- 83 DHO: Okay. So, the...the numbers would be on the Use of Force Report.
- 84 OFC: Yes ma'am.
- 85 DHO: Thank you. You have any other questions, Mr. Armstrong, for...um...
- 86 C/S: No. We don't have...

87 DHO: Stokes?

88 C/S: ...anything for...no...no.

49 DHO: Okay. At...

90 C/S: (inaudible) Brady.

91 DHO: At this time, I'm gonna recess this hearing and contact Officer Brady.

14

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY HEARING PROCEDURE  
DOCKET No.: 12-ALJ-04-0377-AP GRIEVANCE No.: KRCI 208-12  
INMATE NAME: Andrew Plummer SCDC No.: 299191  
INSTITUTION: Kershaw Correctional Institution  
DATE: January 31, 2012/February 7, 2012  
CHARGE: 801-Assault and Battery of an SCDC Employee with Means to Kill or Injure**

1 DHO: The purpose of this hearing is to treat the matter before me with fundamental  
2 fairness and arrive at a just decision. All parties must conduct themselves properly.  
3 Failure to do so will result in removal. State your name and number for the record, sir.  
4 I/M: Andrew Plummer, 299191.  
5 DHO: You are appearing before the Kershaw Correctional Institution Disciplinary  
6 Hearing being recorded on February the 7<sup>th</sup>, 2012, at approximately 9:20 a.m. I want to  
7 note that this case started on January 31<sup>st</sup>, 2012, at approximately 8:52 a.m. Um, the  
8 accuser is Mark Stokes. We did talk to Mark Stokes on the 31<sup>st</sup>, but Inmate Plummer had  
9 wanted Brady to be contacted. Being he had not been notified, we requested an extension  
10 be granted from the Division of Operations, Dennis R. Patterson, and the request was  
11 made by Warden Cecilia Reynolds in reference to a Disciplinary Hearing extension and  
12 the date is January 31<sup>st</sup>, 2012, and it reads: I hereby request a hearing extension be  
13 granted on the following inmate: Andrew Plummer, 299191; Case 42; Offense 801; Date  
14 of Infraction is January 12<sup>th</sup>, 2012; Date Graded: January 13<sup>th</sup>, 2012; Date Entered into  
15 CRT was January 13<sup>th</sup>, 2012; 21 Day Expiration Date is February the 2<sup>nd</sup>, 2012; Reason  
16 for the Extension is the DHO wants to talk to Officer Brady. He is not on the Incident  
17 Report, so he was not notified. I am making this notification today. This request was

**DHO: Disciplinary Hearing Officer**

**I/M: Inmate**

**OFC: Accuser**

**C/S: Counsel Substitute**

15

18 approved by Cecilia Reynolds, approved by Dennis Patterson on February the 6<sup>th</sup>, 2012,  
19 and Inmate Plummer was notified of the hearing extension and received a copy of the  
20 extension. I'm going to re-read the Incident Report for the record. This Incident Report  
21 Number's 011208; Dated January 12<sup>th</sup>, 2012; 3:55 a.m...p.m., excuse me, approximate;  
22 Location's Oak B; and it reads: Officer Mark Stokes, 047850, was feeding the Oak-B  
23 wing at Cell 63. Inmate Plummer, 299191, walked out of his cell. Officer Stokes gave  
24 Inmate Plummer several directives to step back into his cell. Inmate Plummer then  
25 became verbally aggressive. He continued to refuse all directives to return to his cell. He  
26 then came at me in a threatening manner with closed fists. Officer Stokes administered a  
27 2 to 3 second burst of chemical munition to the facial area of Inmate Plummer. Inmate  
28 Plummer came out...came at me, excuse me, with closed fists, striking me in the face.  
29 Inmate Plummer ran downstairs. First Responders was activated. Inmate Plummer was  
30 restrained and taken to the SMU. Inmate Plummer, 299191, was identified by his SCDC  
31 ID card and charged with 801-Assault and Battery of an SCDC Employee with Means or  
32 Intent to Kill or Injure. Photos were taken. I did show Inmate Plummer the photos on the  
33 31<sup>st</sup>. I am gonna now showing him them photos again. Um, Officer Brady, do you recall  
34 this incident?

35 OFC: Yes I do.

36 DHO: Okay. Would you tell me in your own words what you observed?

37 OFC: Okay. Uh...duh...at that time, I was feeding and...and Officer Stokes came in  
38 and assisted me with feeding. When we got to, um, Plummer's cell, um, Stokes had  
39 formerly got into a verbal argument. He asked, um, Plummer to, um, step back into the  
40 cell. Um, Plummer walked towards the steps, where they still continued their verbal

16

- 41 arguement and, um, I intervned and asked Plummer to step back into his cell. He
- 42 stepped into the doorway, but he still couldn't close the door and him and, um, Stokes
- 43 was still goin' at it, but I was in between 'em, at the time. And Stokes...Officer
- 44 Stokes...reached over me and sprayed Inmate Plummer. And that's when we got into
- 45 the, um, physical altercation.
- 46 DHO: Okay. So what, he sprayed Inmate Plummer with you being in the middle? Then,
- 47 how...did anyone pass any licks? Did either person strike the other person?
- 48 OFC: Before or after? After the spray, yes it...it...it got physical.
- 49 DHO: Okay, but you was in the middle. So, was you involved in the altercation also?
- 50 OFC: Uh, I helped restrain him, yes.
- 51 DHO: Okay. When the gas was sprayed, you being in the middle, how did Plummer
- 52 assault Inmate Stokes with you being in between?
- 53 OFC: He didn't assault him until after, um, Stokes sprayed him.
- 54 DHO: Okay. So, once the spray was administered, what did you do?
- 55 OFC: Um, after the spray was administered, at this...at that time a...um, that's when
- 56 Inmate Plummer reached over me, he swung at, um, Stokes and that's when the
- 57 altercation started.
- 58 DHO: Okay. You have any questions for Brady, sir?
- 59 I/M: Um...
- 60 DHO: Do you recall reaching over Officer Brady to assault Officer Stokes?
- 61 I/M: No. Stokes...when Brady...Brady grabbed me...he grabbed me after Stokes
- 62 reached over and grabbs me. Brady grabbed me and pulled me out the room. Okay.

1 /

- 63 Stokes started hitting me in the face. The only thing I did was break free from Brady.
- 64 That's it, and went downstairs.
- 65 DHO: Okay. Well, Brady just said that you reached over him.
- 66 OFC: Nah. Uh, I ain't never hit Stokes. Stokes was hitting me in the face. I broke
- 67 loose from Brady and went downstairs. You know what I'm sayin'? He was hitting me
- 68 in the face. I broke loose. I couldn't even see. So, how could I swing? I had gas in my
- 69 f...I got asthma. I couldn't even breathe or see.
- 70 DHO: Mr. Armstrong, you have any questions for Brady?
- 71 C/S: Yeah. One...one question. This is Armstrong. One question I got...or my
- 72 concern is...did you right a supplemental report to this report, sir?
- 73 OFC: Someone asked me to write a report.
- 74 DHO: Any other questions? Um,...
- 75 I/M: Um...
- 76 DHO:...Plummer...
- 77 I/M: So his...his Incident Report is invalid, right? Because he stated that he
- 78 (inaudible) I attack him and then he sprayed me. I was outside my cell the whole time. I
- 79 never went to my cell. I was in my cell. You know what I'm sayin'. Brady just said
- 80 that, so...
- 81 OFC: Na. You was in the doorway of the cell. You could not close the door because
- 82 you was standin' in the doorway and you and Stokes was still arguing. You were going
- 83 back and forth arguing.
- 84 I/M: Then he reached over and gassed me.

18

85 C/S: Did Officer Stokes at any time ever talk to you about this incident and why you're  
86 not included in it?

87 OFC: I can't hear ya.

88 C/S: Are you aware that you're not even included in this incident at all?

89 OFC: I...I don't understand what you're saying.

90 C/S: In this Incident Report that he wrote, Officer Stokes wrote, you're not included at  
91 all. It's like you never was there.

92 OFC: Yes, I was there.

93 C/S: Mm hm.

94 DHO: You have anything else, Mr. Plummer?

95 I/M: Um, I mean, he never...so...so he...he obviously didn't go to Medical. 'Cause I  
96 ain't see no medical reports. Um, so I was going to ask Brady if, um...

97 DHO: Brady, do you know if Stokes went to Medical here at Kershaw?

98 OFC: Yeah. I think he did. 'Cause I took over...uh, I took over the unit and I stayed  
99 here for the rest of the day. So I think he, uh, went to Medical.

100 DHO: Any other questions, sir?

101 I/M: He didn't put it on the report, so, um...

102 DHO: Well, from the pictures I can see that there was injuries.

103 I/M: But, I don't know when them injuries took place. 'Cause I never even hit him.

104 DHO: Okay. You say you didn't. He says you did and Brady says you did. I got to  
105 make a decision. At this time, I'm gonna recess this hearing to do just that.

106 DHO: Restate your name and number for the record, sir.

107 I/M: Andrew Plummer, 299191.

19

109 DHO: Inmate Plummer, I find you guilty of the offense 801, based on the written and  
101 verbal testimony of Stokes and the verbal testimony of Brady, plus pictures. Your  
110 sanction for this offense is going to be 180 minus 26 equaling a 154 days disciplinary  
111 detention; 154 plus 360 equals 540 days loss of privileges to include canteen, phone,  
112 contact visit suspension; pending medical cost of Stokes; and 80 days loss of good time.  
113 This due to it being your first offense of 801. I did give you credit for 26 days due to the  
114 fact that you was placed in PHD Status on January 12<sup>th</sup>, 2012. You will receive a copy of  
115 the Hearing Record explaining the results and appeal process. You have a right to appeal  
116 my decision by filing SCDC Form 10-5 with the Grievance Coordinator and get the  
117 assistance of the Grievance Coordinator in completing the grievance form if you're  
118 unable to read or write. You are dismissed and this hearing is concluded.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE COURT

Andrew Plummer, #299191, )  
Appellant, )  
-vs- )  
South Carolina Department of Corrections, )  
Respondent. )

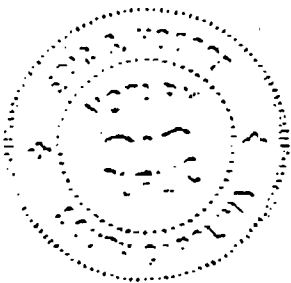
**CERTIFICATION**  
Docket No.: 12-ALJ-04-0377-AP

This is to certify that I am the Disciplinary Hearing Officer who presided at the administrative disciplinary hearing in this matter. I have reviewed the attached transcript of this tape-recorded hearing and hereby certify the transcript as true, accurate, complete and constitutes the entire record of the proceedings.

*Donnie Sellers*  
Disciplinary Hearing Officer  
South Carolina Department of Corrections

SWORN TO before me this  
19<sup>th</sup> day of September, 2012

*C. J. Hooper* (L. S.)  
Notary Public for South Carolina  
My Commission Expires: Feb. 9<sup>th</sup>, 2020



ADMINISTRATIVE LAW COURT

21

ANDREW PLUMMER  
APPELLANT

v.  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
RESPONDENT

COPY

DOCKET No.: 12-ALJ-04-0377-AP  
SEE ATTACHED AFFIDAVIT

APPELLANT'S PROPOSED ORDER  
GRANTING MOTION FOR JUDGMENT  
PURSUANT TO RULE (59, A, B, C), (60 A, B, 1, 2, 3, 4, 5, C),  
63.

THE ABOVE NAMED APPELLANT ANDREW PLUMMER HEREBY MOVES BY WAY OF THIS PROPOSED ORDER FOR A ORDER GRANTING JUDGMENT AGAINST THE RESPONDENTS FOR THE FOLLOWING ADMINISTRATIVE LAW COURT RULES VIOLATIONS:

THE APPELLANT FILED A MOTION FOR JUDGMENT TO BE RULED IN HIS FAVOR AGAINST THE RESPONDENTS ON DATE AUGUST 22, 2012 PURSUANT TO RULE (60, A, B, C) AND IN ACCORDANCE WITH RULE 52. THE RESPONDENTS FAILED TO RESPOND TO MOTION WITHIN THE TEN (10) DAYS MENTIONED IN RULE (63). THE RESPONDENTS NEVER MENTIONED THE COURTS FOR AN ENLARGEMENT OF TIME TO FILE A MOTION RESPONSE AND HAS A HISTORY THUS FAR OF NOT COMPLYING WITH THE COURT RULES AND PROCEDURES AND THE APPELLANT RESPECTFULLY REQUEST THAT A FINAL JUDGMENT IS RENDERED; FURTHERMORE A MOTION TO ENLARGE TIME WAS FILED BY THE RESPONDENTS ON JULY 16, 2012 AND WAS GRANTED ON JULY 16, 2012 ALLOWING THE RESPONDENTS (60) DAYS TO FILE THE ENTIRE DISCIPLINARY HEARING RECORD AND TRANSCRIPT WITH THE COURT AND A COPY TO APPELLANT IN COMPLIANCE WITH RULE (58, 59), THE RESPONDENT HAS FAILED TO COMPLY WITH COURT ORDER DATED JULY 22, 2012. THE APPELLANT FURTHER FILED HIS INTERIM BRIEF WHICH WAS ATTACHED TO NOTICE OF APPEAL DATED MAY 23, 2012 (SEE APPEAL FILED AUG 22, 2012) THE RESPONDENTS HAD (85) DAYS TO FILE A RESPONSE TO BRIEF WHICH BEGAN ON DATE MAY 23, 2012; THE EXPIRATION DATE COMMENCED ON D AUGUST 17, 2012 WHICH WAS (85) DAYS TO THE EXACT. APPELLANT PLEADS THE COURT TO ORDER GRANTED ON JULY 16, 2012 WHICH DOES NOT GRANT A ENLARGEMENT OF TIME TO RESPOND TO BRIEF NOR DID RESPONDENTS FILE ANY TIMELY MOTION FOR AN ENLARGEMENT OF TIME TO FILE A RESPONSE TO BRIEF.

WHEREFORE THE APPELLANT HEREBY PLEADS THAT THE HONORABLE COURT'S GRANT THIS ORDER GRANTING APPELLANT'S MOTION FOR JUDGMENT FOR THE VARIOUS RULES VIOLATIONS MENTIONED ABOVE ALSO THAT RESPONDENTS ARE MANDATED TO REINSTATE ALL APPELLANT'S GOODTIME OF 80 DAYS PLUS 21 DAYS FOR THE MONTH OF JANUARY WHICH WERE LOST, TELEPHONE PRIVILEGES, VISITATION PRIVILEGES, AND MANDATING THAT TYGER RIVER INSTITUTION RELEASE APPELLANT TO GENERAL POPULATION FROM SECURITY DETENTION DUE TO CHARGE 801 CASE 42. APPELLANT FURTHER REQUEST THAT UPON JUDGMENT IN HIS FAVOR THAT CASE NUMBER 4 CHARGE 801 IS OVERTURNED AND DISMISSED ON ALL DUE PROCESS GRAMMES RAISED IN APPEAL AND BRIEF STATEMENT FILED BY COURT ON DATE MAY 23, 2012.

/s/

HONORABLE STEALTHY C. ROBERSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I ANDREW PLUMMER ON THE 15 DAY OF SEPTEMBER 2012 IN ENOREE, SOUTH CAROLINA, SERVED A COPY OF THE DOCUMENT/PROPOSED ORDER TO ALL PARTIES TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, OR IN THE MAILROOM OF THE UNDERSIGNED INSTITUTION AND ADDRESSED AS FOLLOWS:

NAME OF PERSON/AGENCY SERVED: ADMINISTRATIVE LAW COURT

ADDRESSED: ADMINISTRATIVE LAW COURT, EDGAR A. BROWN BUILDING 1205 PONDIXTON STREET, SUITE 224 / OFFICE OF GENERAL COUNSEL  
P.O. BOX 21787 / 444 BURNHAMMER ROAD  
COLUMBIA SOUTH CAROLINA  
29221-1187

FILED

SEP 18 2012

SC ADMIN. LAW COURT

ADMINISTRATIVE LAW COURT

22

PAGE 2-2

COPY

DOCKET No.: 12-ALJ-04-0377-AP

APPELLANTS OBJECTIONS TO TRANSCRIPT FILED BY RESPONDENT ON DATE SEPTEMBER 21, 2012

ANDREW PLUMMER  
APPELLANT

v.  
SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS, RESPONDENT

THE ABOVE NAMED APPELLANT HEREBY OBJECTS TO THE RESPONDENTS RECORD THAT WAS FILED WITH THE COURT AS FOLLOWS;

- 1) THE RESPONDENT DID NOT INCLUDE IN THE RECORD SCLC FORM 19-11 STAFF REQUEST FORMS (2) TWO DATED 2-12-12 AND 1-31-12 IN COMPLIANCE WITH RULE 58.
- 2) NO USE OF FORCE REPORT, MEDICAL DOCUMENT, WAS PUT IN RECORD.
- 3) THE SCLC 19-09 FORM WAS NOT ORIGINALLY SIGNED BY WARDEN REYNOLDS AS APPELLANTS COPY HAS NO SIGNATURE APPROVING THE CONVICTION ON DATE FEBRUARY 7, 2012.
- 4) APPELLANT OBJECTS TO JANUARY 31, 2012 HEARING TRANSCRIPT LOVE 42150, AS THE TAPE RECORDING STATES SERGEANT WRIGHT NOT SERGEANT BRIGHT (AND BOTH SERGEANT WRIGHT AND SMOCKERS DID TAKE PICTURES OF APPELLANTS BUSIED LIP ON JANUARY 12, 2012.
- 5) APPELLANT OBJECTS TO BOTH PICTURES OF OPC, STOKES AND ANDREW PLUMMER (APPELLANT) AS PICTURES TAKEN ON JANUARY 12 2012 ARE IN BLACK AND WHITE AND THERE ARE NO VISIBLE INJURIES ETC.

**FILED**

OCT 02 2012

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY ANDREW PLUMMER ON DATE 1 DAY OF OCTOBER 2012 ENOKEE SOUTH CAROLINA,  
 SERVED A COPY OF THE FOREGOING NOTICE OF APPEAL ON ALL PARTIES TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID,  
 OR IN THE UNDERSIGNED INSTITUTION AND ADDRESSED AS FOLLOWS:  
 NAME OF PERSON / AGENCY SERVED: ADMINISTRATIVE LAW COURT / GENERAL COUNSEL  
 ADDRESS: ADMINISTRATIVE LAW COURT EDGAR A. BROWN BUILDING 1269 POUNDTOWN STREET, SUITE 224 / OFFICE OF GENERAL COUNSEL  
 CITY, STATE, ZIP CODE: COLUMBIA SC 29201 / P.O. BOX 21787 / 4444 BROADRIVER ROAD  
 COLUMBIA SC 29221-1787

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

23

FILED

OCT 02 2012

Page 1-2

COPY

SC ADMIN. LAW COL

DOCKET No.: 12-ALS-04-0377-AP

Appellant Amended Brief

ANDREW PLUMMER  
Appellant

v.  
SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS, Respondent

The Appellant filed this Grievance Appeal Step 1 KR02-0208-12 Charge 801 Case 42 February 13, 2012 which was Denied by Warden on Date of February 29, 2012. Appellant then filed a Grievance Step 2 Appeal on Date March 23, 2012 and received the Agencies Final Decision on May 11, 2012 Denying the Appellant all Relief Requested. The Appellant raised several Policy Violations as to Charge Officers Incident Report which fall under SCDL Form 19-29 A, "Incident Report" This Report will be typed if (possible) and will at a minimum, include the following information: ' Institution/Centre', ' Reporting Officials Full Name', ' Location of Incident', ' Date and Time of Report', ' Date and Time of Incident', ' Employees/Witnesses Involved', ' SCDL Policy 08-22.14-34 - A Description of the Facts of the Offenses, to include at a minimum: the Name and SCDL Number of the Inmate, the Name of all Witnesses, the General Location of the Offenses, and a Full Statement of the Facts Underlying the Offense, to include Witnesses, Evidence, and a Description of Evidence', ' The Referring Officials Signature, Title, List of Any Evidence, and Disposition of Evidence, Officer Stokes 19-29 A Incident Report states " I OFC MARK STOKES WAS FEEDING THE OAK B WONG AT CELL 63, INMATE ANDREW PLUMMER (2941A) WALKED OUT OF HIS CELL, I OFC M. STOKES GAVE INMATE ANDREW PLUMMER SEVERAL DIRECTIVES TO STEP BACK INTO HIS CELL. INMATE ANDREW PLUMMER THEN BECAME VERBALLY ABUSIVE, HE CONTINUED TO REFUSE ALL DIRECTIVES TO RETURN TO HIS CELL HE THEN CAME AT ME IN A THREATENING MANNER WITH CLOSED FIST. I OFFICER M. STOKES ADMINISTERED A THE TO THREE SECOND BURST OF CHEMICAL MUNITIONS TO THE FACIAL AREA OF INMATE ANDREW PLUMMER I/M A. PLUMMER CAME AT ME WITH CLOSED FIST STRUCK ME IN THE FACE. INMATE A. PLUMMER RAN DOWN STAIRS, 1ST FLOOR, WHO ACTIVATED, INMATE A. PLUMMER WAS RESTRAINED AND TAKEN TO 5114. (OFFICER BRADY'S STATEMENT GIVEN AT HEARING ON FEBRUARY 7, 2012 TRANSCRIPT LINE 37) (" I WAS FEEDING AND... AND OFFICER STOKES CAME IN AND ASSIGNED ME WITH FEEDING, WHEN WE GOT TO, UM, PLUMMER'S, CELL UM, STOKES HAD FORMERLY CUT INTO A VERBAL ARGUMENT. HE ASKED, UM, PLUMMER TO, UM, STEP BACK INTO THE CELL, UM, PLUMMER WALKED TOWARDS THE STEPS, WHERE THEY CONTINUED THEIR ARGUMENT AND, UM, I INTERVENED AND ASKED PLUMMER TO STEP BACK INTO HIS CELL. HE STEPPED INTO THE DOORWAY, BUT HE STILL COULDN'T CLOSE THE DOOR AND HE AND, UM, STOKES WAS STILL GUSH AT IT, BUT I WAS IN BETWEEN EM, AT THE TIME, AND STOKES... OFFICER STOKES... RAN OVER ME AND SPRAWLED INMATE PLUMMER. AND THIS WHEN WE GOT INTO THE PHYSICAL ALTERCATION, APPELLANT STATEMENT OF INCIDENT WAS GIVEN AT HEARING ON DATE JANUARY 31, 2012 AND STARTS ON TRANSCRIPT LINE 33 (ON JANUARY 22, 2012, OFFICER STOKES ALONG WITH OFFICER BRADY AND KITCHEN WORKERS WERE PASSING OUT BAG LUNCHES CAUSE THE UNIT WAS ON LOCK DOWN FOR THE PAST SEVEN DAYS (7). WHEN THEY GOT TO MY CELL, 63, WHICH IS THE LAST TO GET BAG LUNCHES, OFFICER STOKES HANDED ME ONE (1) BAG LUNCH THEN WENT TO CELL 64 AND HANDED THEM THE LAST TWO BAG LUNCHES. I THEN STATED TO THE KITCHEN WORKERS THAT I HAD NO BAG LUNCHES AND OFFICER BRADY AUTHORIZED KITCHEN WORKERS TO GIVE ME A BAG LUNCH AND THE KITCHEN WORKERS THREW THE BAG LUNCH UP FROM THE BOTTOM TIER TO ME. AFTER I GOT THE BAG LUNCH, OFFICER STOKES GRABBED MY ARM AND TOLD ME TO GO TO MY CELL AND I ASKED HIM NOT TO GRAB ME AND THAT I WAS GOING TO MY ROOM. OFFICER BRADY WAS WALKING AND TALKING TO ME WHILE... UNTIL I GOT TO MY ROOM. OFFICER STOKES THEN REACHED OVER OFFICER BRADY AND HIT ME WITH... HIT ME WITH THE MACE CANON CLOSED IN HIS FISTS. BUSTED MY LEG, THEN... THEN RAN OVER BRADY THEN STARTED STRIKING. BRADY WAS PULLING ME OUT OF THE CELL. OFFICER STOKES, WHILE BRADY WAS HOLDING UP MY ARM, BEGAN PUNCHING ME REPEATEDLY, OFFICER BRADY LET ME GO AND I WALKED DOWNSTAIRS THEN OUT THE DOOR TO THE YARD WHERE SERGEANT GARDNER CAME OUT AND PUT HANDCUFFS ON ME WHILE... WHILE I WAS STRUGGLING TO BREATHE FROM THE GAS. REPEATEDLY WERE TOLD)

IF THE COURT EXAMINE OFFICER STOKES INCIDENT REPORT IT IS CLEAR THAT OFFICER BRADY'S TESTIMONY IS NOWHERE NEAR THE SAME AS OFFICER STOKES INCIDENT REPORT AS OFFICER STOKES STATES THAT HE GAVE APPELLANT SEVERAL DIRECTIVES TO GO TO CELL AND APPELLANT STRUCK HIM MORE THAN ONE TIME. OFFICER BRADY'S TESTIMONY STATES THAT APPELLANT SWUNG AT OFFICER STOKES AND NEVER ONCE STATES THAT APPELLANT MADE ANY CONTACT WITH OFFICER STOKES AS THE THE WORD SWUNG IS A SINGULAR WORD FOR ONCE OR ONE TIME. THE DISCIPLINARY HEARING OFFICER HAD A DUTY PURSUANT TO OP-22.14-15.7, 15.7.1, 15.7.2 - TO REQUESTING OFFICER STOKES ON THE GROUNDS THAT HIS VERSION OF THE INCIDENT REPORT DIFFERED TOTALLY FROM OFFICER BRADY'S REPORT/TESTIMONY AND APPELLANT'S TESTIMONY AS IT WAS CLEAR THAT OFFICER STOKES WAS UNTRUTHFUL AS TO WHAT ACTUALLY TOOK PLACE IN ATTEMPTS TO COVER UP THE FACT THAT OFFICER STOKES ASSAULTED THE APPELLANT.

FURTHERMORE OFFICER STOKES NEVER WAS TREATED BY MEDICAL NOR DID HE EXPRESS ANY INJURIES ON HIS INCIDENT REPORT WHICH IS REQUIRED BY OP-22.14; ALSO OFFICER STOKES NEVER LEFT THE FACILITY AFTER INCIDENT AS HIS REPORT TIME WAS 6:40 PM THE INCIDENT TIME WAS 3:55 PM. IT IS OBVIOUS THAT THE TRANSCRIPT FOR BOTH HEARINGS WAS TAMPERED WITH AS VITAL INFORMATION WAS CUT OFF ALMOST EVERYTIME THE APPELLANT SPOKE, SEE TRANSCRIPT LINES 44-99/SECTION NO THERE IS NO POSSIBLE WAY THE HEARING OFFICER CAN MAKE ANY MEDICAL STATEMENT INVOLVING ANY INJURY WITHOUT BEING A QUALIFIED PHYSICIAN SO THERE IS NO POSSIBLE WAY APPELLANT COULD HAVE OR SHOULD HAVE BEEN CONVICTED AT DISCIPLINARY HEARING WITHOUT MEDICAL DOCUMENTS AND AFFIDAVIT FROM PHYSICIAN OR TREATING NURSES WHICH WITHOUT SUCH VIOLATED APPELLANT DUE PROCESS AND RIGHT TO A FAIR HEARING. THERE WAS NO MEDICAL RECORDS THAT EXISTED NOR WAS ANY MEDICAL RECORDS PUT ON THE RECORDS FOR REVIEW OR USED ON 19-69 FORM FOR DOCUMENTARY EVIDENCE FOR CONVICTION AND SUCH PREJUDICED THE APPELLANT.

REGARDING AN INMATE SUBJECT TO A DISCIPLINARY HEARING IS ENTITLED TO, INTER ALIA, AN IMPARTIAL HEARING OFFICER WELFV. McDONNELL 418 U.S. 539, 570-71, 44 S.Ct. 296, 1961-62, 41 L.Ed.2d 935 1974. OUR CONCEPTION OF AN IMPARTIAL DECISION MAKER IS ONE WHO, INTER ALIA, DOES NOT PRECLUDE THE EVIDENCE AND WHO CANNOT SAY, WITH THE UTTER CERTAINTY ADVANCED BY THESE DEFENDANTS HOW HE WOULD ASSESS EVIDENCE HE HAS NOT SEEN. FRANCISE V. COUGHLIN 891 F.2d 43, 46 (2d Cir. 1987)

IT WOULD BE IMPROPER FOR JUDICIAL OFFICIALS TO DECIDE THE DISPOSITION OF A CASE BEFORE IT WAS HEARD. FURTHERMORE THE DISCIPLINARY HEARING OFFICER MS. SELERS COMPLETED A SWORN CERTIFICATION SIGNED AND NOTARIZED ON DATE SEPTEMBER 19, 2012, STATING THAT THE ENTIRE RECORD WAS FILED WITH COURT AND APPELLANT WHICH HAD NO MEDICAL RECORDS AT ALL.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ANDREW PLUMMER ON THE 1 DAY OF OCTOBER 2012 IN ENDRE SOUTH CAROLINA, SERVED A COPY OF THE FOREGOING NOTICE OF APPEAL ON ALL PARTIES TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, OR IN THE MAILROOM OF THE UNDERSIGNED INSTITUTION AND ADDRESSED AS FOLLOWS:

NAME OF PERSON/ AGENCY SERVED: ADMINISTRATIVE LAW COURT / GENERAL COUNSEL

ADDRESSED: ADMINISTRATIVE LAW COURT EDGAR A. BROWN BUILDING 1205 PENNINGTON STREET, SUITE 224 / OFFICE OF GENERAL COUNSEL  
 COLUMBIA SC 29201-1767

CITY, STATE, ZIP CODE: COLUMBIA SC 29201

STATE OF SOUTH CAROLINA 25  
ADMINISTRATIVE LAW COURT

ANDREW PLUMMER  
APPELLANT

v.  
SOUTH CAROLINA DEPARTMENT OF  
CORRECTIONS, RESPONDENT

PAGE 2-2  
COPY

DECKET No. : 12-ALJ-04-0377-AP


AFFIDAVIT

BY: ANDREW S. PLUMMER

THE ABOVE NAMED APPELLANT HEREBY STATES AND DEPOSES THAT THE FOLLOWING INFORMATION IS TRUE AND CORRECT:

- 1) THAT HE IS 21 YEARS OF AGE OR OLDER.
- 2) THAT HE IS THE ABOVE NAMED APPELLANT NAMED IN THE CAPTION.
- 3) THAT HE IS OF SOUND MIND.
- 4) THAT HE SENT THE FOLLOWING DOCUMENT TO THE ADMINISTRATIVE LAW COURT TO BE STAMPED FILED AND HANDWRITTEN COPIES TO BE SENT BACK IN SELF-ADDRESSED ENVELOPE ENCLOSED. ALSO GENERAL COUNSEL WAS SENT COPIES OF ALL FOLLOWING DOCUMENTS:
  - 1) APPELLANT'S PERMISSION AND MOTION FOR OADEK.
  - 2) APPELLANT'S MOTION FOR JUDGMENT, MOTION FOR DISMISSAL OF CHARGE BY CASE 42
  - 3) APPELLANT ANSWERED BRIEF
  - 4) APPELLANT'S OBJECTIONS TO TRANSCRIPT FILED BY RESPONDENT ON DATE SEPTEMBER 21, 2012

I, HEREBY DECLARE UNDER THE PENALTY OF PERJURY THAT THE ABOVE AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, WISDOM AND UNDERSTANDING AND THAT I AM ENTITLED TO REDRESS IN A TIMELY MANNER. THANKS IN ADVANCE!

  
APPELLANT

OCTOBER 1, 2012

**FILED**

OCT 02 2012

SC ADMIN. LAW COURT

ADMINISTRATIVE LAW COURT

20

PAGE 2-2

COPY

FILED

OCT 02 2012

SC ADMIN. LAW COURT

DOCKET No.: 12-ALJ-04-0577-AP

APPELLANT'S MOTION FOR JUDGMENT

MOTION FOR DISMISSAL OF CHARGE 801 CASE 42

ANDREW PLUMMER  
APPELLANT

VI  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
RESPONDENT

THE ABOVE NAMED APPELLANT HEREBY MOTIONS THE COURT FOR JUDGMENT IN HER FAVOR AS FOLLOWS:

AT HEARING DATE FEBRUARY 7, 2012 THE DISCIPLINARY HEARING OFFICER HAD A DUTY TO WEIGH ALL EVIDENCE PRESENTED AT THE DISCIPLINARY HEARING. THERE WAS AMPLE CREDIBLE EVIDENCE PRESENTED BY APPELLANT AND OFFICER BRADYS TESTIMONY TO SHOW THAT OFFICER STOKES INCIDENT REPORT WAS UNTRUTHFUL AND INVALID AS TO WHAT TOOK PLACE. APPELLANTS TESTIMONY AND PICTURES TAKEN SHOWED THAT FORCE WAS USED UNJUSTLY (SEE OFFICER BRADYS TESTIMONY) AS OFFICER BRADYS TESTIMONY STATES THAT APPELLANT WAS ORDERED TO GET TO HIS CELL AND APPELLANT COMPLIED AND WAS SPRAYED WITH NO JUST CAUSE AS OFFICER NEVER ONCE STATED THAT APPELLANT PRESENTED ANY THREAT TOWARDS SECURITY OR OFFICER STOKES TO JUSTIFY THE USE OF CHEMICAL MACE/STUN SPRAY AND THE USE OF HAND CONTACT BY STOKES AGAINST APPELLANT WHICH CAUSED APPELLANT TO HAVE INJURY TO HIS THUMB AND TEETH. (SEE APPELLANTS PICTURES)

SLDC POLICY 09-22.14 - CHARGE 801 STATES AS FOLLOWS: ASSAULT AND/OR BATTERY OF AN SLDC EMPLOYEE OR OTHER GOVERNMENT EMPLOYEE, CONTRACT EMPLOYEE, VOLUNTEER OR MEMBER OF THE PUBLIC WITH MEANS/AND OR INTENT TO KILL OR INJURE; THE WILLFUL HITTING, STRIKING, OR UNAUTHORIZED TOUCHING OF AN SLDC EMPLOYEE OR OTHER GOVERNMENT AGENCY EMPLOYEE, CONTRACT EMPLOYEE, VOLUNTEER, OR MEMBER OF THE PUBLIC WITH OR WITHOUT A WEAPON OR THE THROWING OF ANY SUBSTANCE AT OR ON AN SLDC EMPLOYEE OR OTHER GOVERNMENT AGENCY EMPLOYEE OR CONTRACT EMPLOYEE WHO IS EXERCISING LEGITIMATE AUTHORITY OVER AN INMATE, WHEN SUCH HITTING, STRIKING, THROWING, OR UNAUTHORIZED TOUCHING CAUSES BODILY INJURY.

A ESSENTIAL ELEMENT TO PROVE ASSAULT IS THAT BODILY INJURY WAS CAUSED. WITHOUT MEDICAL RECORDS OR A AFFIDAVIT SUBMITTED BY TREATMENT TEAM OR PHYSICIAN THERE IS NO WAY THE DISCIPLINARY HEARING OFFICER CAN ASSESS ANY INJURIES AND CONVECT THE APPELLANT, McMillen v. Dumant, 312 S.C. 200, 431 S.E. 2d 924 (1993), Francis v. Coulthart 391 F.2d 43, 46 (2d Cir. 1968); Wolf v. McDonnell 418 U.S. 531, 570-71, 94 S.Ct. 2863, 2881-82, 41 L.Ed. 2d 935 (1974);

FURTHER THE APPELLANT WAS DENIED WITNESSES TO BE PRESENT AT HEARINGS ON JANUARY 31, 2012 AND FEBRUARY 7, 2012 WHICH DENIED APPELLANT DUE PROCESS TO A FAIR HEARING.

WHEREFORE THE APPELLANT PRAYS THAT THE HONORABLE COURTS GRANT THIS MOTION FOR JUDGMENT AND OVERTURNS AND DISMISSES CHARGE 801 CASE 42 AND MANDATES SCDC TO REINSTATE APPELLANTS GOODTIME OF 180 DAYS PLUS 21 DAYS GOODTIME FOR MONTH OF JANUARY, PHONE PRIVILEGES, VISITATION PRIVILEGES, CANTON PRIVILEGES AND CREDITS APPELLANT FOR DISCIPLINARY DEPRIVATION TIME SERVED OF 180 PLUS, AND ORDER SCDC TO EXPUNGE CHARGE 801 CASE 42 FROM APPELLANTS PRISON RECORD FOR THE DUE PROCESS AND PROCEDURAL DUE PROCESS VIOLATIONS MENTIONED IN BRIEFS, BOTH PICTURES OF APPELLANT AND OFFICER STOKES WERE IN BLACK AND WHITE AND UNVIEWABLE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I ANDREW PLUMMER ON DATE 1 DAY OF OCTOBER 2012 IN ENOCH SOUTH CAROLINA, SERVED A COPY OF THE FOREGOING NOTICE OF APPEAL ON ALL PARTIES TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, OR IN THE UNDERSIGNED INSTITUTION AND ADDRESS AS FOLLOWS:  
NAME OF PRISON/AGENCY SERVED: ADMINISTRATIVE LAW COURT/GENERAL COUNSEL  
ADDRESS: ADMINISTRATIVE LAW COURT EDGAR A. BRANN BUILDING 1205 HENDLTON STREET, SUITE 214 / OFFICE OF GENERAL COUNSEL P.O. BOX 21787/4444 BROADVIEWER ROAD COLUMBIA SC 29221-1781  
CITY, STATE, ZIP CODE: COLUMBIA SC 29201

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

27

**FILED**

OCT 05 2012

SC ADMIN. LAW COURT

Docket No.: 12-ALJ-04-0377-AP

Appellants Amended Brief

ANDREW PLUMMER  
Appellant

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
Respondent

THE APPELLANT HEREIN WITH THIS BRIEF EXPRESSLY STATES THE FOLLOWING TO BE TAKEN INTO CONSIDERATION BY THE COURT:

WITNESS TESTIMONY / EVIDENCE

- 1) THE APPELLANTS COUNSEL SUBSTITUTIVE MR. ARMSTRONG WAS ASKED BY DHO MS. SELLERS AT HEARING ON JANUARY 31, 2012 (IN TRANSCRIPT PAGE 2 LINE 27, 28) IF APPELLANT HAD ANY WITNESSES OR EVIDENCE AND MR. ARMSTRONG'S REPLY WAS YES, PURSUANT TO SCDC PRISON POLICY OP-22.14-15.3 THE DHO HAD A DUTY TO INQUIRE AS TO WHO OR WHAT THE TESTIMONY CONSIST OF WHICH DID NOT TAKE PLACE.
- 2) THE APPELLANT WAS DENIED HIS RIGHT TO A FAIR AND IMPARTIAL HEARING WHICH IS GUARANTEED BY THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE AND THE PROCEDURAL DUE PROCESS WHICH IS MANDATED TO BE AFFORDED TO ALL INMATES HOLDING WITHIN SCDC WHO FACE DISCIPLINARY HEARING OFFICER FAILED TO INQUIRE INTO THE NATURE OR WHEREABOUTS OF WITNESSES AND EVIDENCE INTENDED TO BE USED BY THE APPELLANT IN HIS DEFENSE.
- 3) THE APPELLANT WAS DENIED BY DISCIPLINARY HEARING OFFICER TO INSPECT THE USE OF FORCE REPORT TO USE NARRATIVE WRITTEN IN REPORT AS A DEFENSE AGAINST CHARGE 801 WHICH COULD HAVE BEEN FAVORABLE FOR THE DEFENSE AND SUCH UNWARRANTEDLY DENIED THE APPELLANT A RIGHT TO A FAIR HEARING.
- 4) AT HEARING ON DATE FEBRUARY 7, 2012 IT WAS CLEAR ON PAGE 5 THAT THERE WERE NO VERIFICATIONS AS TO IF OFFICER STOKES EVER WENT TO MEDICAL, IT WAS NEVER STATED IF DISCIPLINARY HEARING OFFICER HAD PRODUCED ANY MEDICAL DOCUMENTS OR AFFIDAVIT FOR PROOF TO ANY MEDICAL TREATMENT INVOLVING OFFICER STOKES AND SUCH IS A CRITICAL ELEMENT REQUIRED TO CHARGE AND CONVICT A INMATE OF CHARGE 801 AS STATED IN CHARGE NARRATIVE AND APPELLANT WAS ONCE AGAIN DENIED HIS RIGHT TO A FAIR AND IMPARTIAL HEARING AFFORDED THROUGH THE FOURTEENTH AMENDMENT DUE PROCESS.
- 5) APPELLANT SENT TWO STAFF REQUEST FORMS PRIOR TO BOTH DISCIPLINARY HEARINGS REQUESTING INMATE AND OFFICER STATEMENTS AND TESTIMONY TO BE PRESENT AT THE DISCIPLINARY HEARING TO INCLUDE MEDICAL REPORTS ET CETERA, THE REQUEST FORMS WERE SIGNED BY DHO MS. SELLERS ON DATES JANUARY 31, 2012, FEBRUARY 7, 2012 AFTER BOTH HEARINGS, BUT WERE NOT INCLUDED WITHIN THE ADMINISTRATIVE LAW COURT RECORDS AS MANDATED BY RULE 57, 58, 59, AND ALSO IN VIOLATION TO SCDC PRISON POLICY OP-22.14-15.3, THE UNDOCUMENTED DENIAL OF WITNESSES DENIED THE APPELLANT A RIGHT TO A FAIR HEARING AFFORDED BY PRISON POLICY AND THROUGH THE FOURTEENTH AMENDMENT PROCEDURAL / DUE PROCESS.

CITING WOLFF V. McDUNNELL 418 U.S. 534, 570-71, 94 S.Ct. 2463, 2481-82, 41 L.Ed.2d 435 (1974); FRANCIS V. CAGHLEN 842 F.2d 431, 436 (2d Cir. 1988); MEMPHIS COMMUNITY SCHOOL DISTRICT V. STACHURA, 417 U.S. 291, 310-11, 106 S.Ct. 2537, 2545, 41 L.Ed.2d 144 (1974) - AN INMATE SUBJECT TO A DISCIPLINARY HEARING IS ENTITLED TO, INTER ALIA, AN IMPARTIAL

HEARING OFFICER. OUR CONCEPTION OF AN IMPARTIAL DECISIONMAKER IS ONE WHO, INTER ALIA, DOES NOT PREJUDICE THE EVIDENCE AND WHO CANNOT SAY, WITH THE UTTER CERTAINTY ASSURED BY THESE DEFENDANTS HOW HE WOULD ASSESS EVIDENCE HE HAS NOT SEEN - ETC.  
WE CONCLUDE THAT EVEN AS TO AN ISSUE ON WHICH THE PLAINTIFF NORMALLY HAS THE BURDEN OF PROOF, IT WOULD BE INAPPROPRIATE TO RULE WHERE THE DEFENDANTS HAVE MADE THEIR INTERESTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I, ANDREW PLUMMER ON THE 11 DAY OF OCTOBER 2012 IN ENGLE SOUTH CAROLINA, SERVED A COPY OF THE FOREGOING NOTICE OF APPEAL ON ALL PARTIES TO THIS MATTER BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PAID, OR IN THE MAIL ROOM OF THE UNDERSIGNED INSTITUTION AND ADDRESSED AS FOLLOWS: TIGER ROVER C-2.

NAME OF PERSON / AGENCY SERVED: SC ADMINISTRATIVE LAW COURT SUITE 224 1205 PENNINGTON ST COLUMBIA SC 29201 / OFFICE OF GENERAL COUNSEL P.O. BOX 21387 / 4444 BRAD RD COLUMBIA SC 29221-1787  
ADDRESS: ADMINISTRATIVE LAW COURT  
CITY, STATE, ZIP CODE: COLUMBIA SC 29201

STATE OF SOUTH CAROLINA 28  
ADMINISTRATIVE LAW COURT

PAGE  
1-2  
COPY

DOCKET NO.: 12-ALS-04-0377-AP

FILED

APPELLANTS REPLY BRIEF

OCT 30 2012

SC ADMIN. LAW CO

ANDREW PLUMMER  
APPELLANT  
v.  
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
RESPONDENT

THE APPELLANT HEREBY RESPONDS TO THE RESPONDENTS BRIEF SUBMITTED ON OCTOBER 19, 2012 AND STATES THE FOLLOWING FOR COURT REVIEW AND CONSIDERATION:

DUE PROCESS WAS NOT AFFRDED

THE APPELLANT STATES THAT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS A DUTY TO COMPLY WITH THE FOURTEENTH AMENDMENT DUE PROCESS STATUTE WHICH AFFORDS ALL PRISON INMATES WITH A FAIR AND REASONABLE DISCIPLINARY HEARING FOR PRISON RULE VIOLATIONS. SCDC HAS PROVIDED INMATES WITH A PRISON POLICY 09-22.14 (DISCIPLINARY SYSTEM) WHICH SET FORTH DUTIES FOR PRISON OFFICIALS TO COMPLY WITH WHEN TAKING ANY TYPE OF DISCIPLINARY ACTION AGAINST AN INMATE. OFFICER STOKES (FRONT) DID NOT COMPLY WITH 09-22.14-3 WHICH STATES OFFICERS FILLING OUT AN INCIDENT REPORT SHALL LIST THE EMPLOYEE / WITNESSES INVOLVED (OFFICER STOKES 14-29A INCIDENT REPORT / DHO TRANSCRIPT JANUARY 31, 2012, PAGES 3-4) OFFICER STOKES STATED THAT OFFICER BRADY DID NOT TAKE PART IN INCIDENT RESEARCH WAS NOT TAKEN AND OFFICER STOKES DID COMPLY WITH OFFICER STOKES MADE AN ATTEMPT TO LEAVE OFFICER BRADY TALK OUT OF HIS ROOM TO AVOID THE FACT THAT HE OFFICER STOKES USED CHEMICAL MISTRAKON SPRAI FOR NO JUST CAUSE AND FURTHER ATTEMPTED TO LIE ABOUT HIS VERSION OF OCCURRENCE'S STATING THAT APPELLANT CAME AT HIM WITH CLOSED FIST TO JUSTIFY HIS UNJUSTIFIED USE OF CHEMICAL MISTRAKON SPRAI (SEE TRANSCRIPT BY OFFICER BRADY FEBRUARY 7, 2012 PAGE 2)

APPELLANT FURTHER COMPLAINED WITH SCDC POLICY 09-22.14-9.2.3, AND FILED TWO STAFF REQUEST FORMS PURSUANT TO 09-22.14-9.2.4 - AND MADE HEARING OFFICER AWARE THAT HE HAD WITNESSES AND EVIDENCE HE'D LIKE TO PRESENT FOR HIS DEFENSE (SEE HEARING TRANSCRIPT JANUARY 31 2012 PAGE 2) THE HEARING OFFICER ASKED COUNSEL IF THERE WAS WITNESSES OR EVIDENCE AND THE HEARING OFFICER FAILED TO INQUIRE AS TO WHAT THE WITNESSES AND EVIDENCE CONSISTED OF DENYING THE APPELLANT HIS DUE PROCESS RIGHT TO A FAIR AND IMPARTIAL HEARING. TWO STAFF REQUEST FORMS WERE SENT TO COUNSEL SUBSTITUTE AND HEARING OFFICER BOBBA BOTH HEARINGS IN COMPLIANCE WITH (09-22.14) REQUESTING TWO INMATE WITNESSES TO INCIDENT, A NURSE AND A FEW OFFICERS WHO WERE IN FRONT ALL INVOLVED WITH INCIDENT AND DHO WAS WELL AWARE OF THESE REQUEST FORMS ALONG WITH COUNSEL SUBSTITUTE (SEE BY TRANSCRIPT PAGE 2 JANUARY 31, 2012) THIS DENIED APPELLANT TO BE ABLE TO PRESENT WITNESSES AND EVIDENCE IN HIS DEFENSE AS THE INMATE WAS MADE OUT OF PRISON AND THE DENIAL OF HIS TESTIMONY AND INQUIRY INTO SUCH INCIDENTS BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS DISCIPLINARY BOARD AND REQUESTS THE DISCIPLINARY CHARGE TO BE OVERRULED AND DISMISSED. THE COUNSEL SUBSTITUTE DID NOT FULFILL HIS DUTY DURING TWO HEARINGS AS HE ALLOWED DHO TO INTERVIEW WITNESSES AND EVIDENCE FAVORABLE FOR APPELLANT'S DEFENSE. APPELLANT'S TESTIMONY GIVEN IN FEBRUARY 7, 2012, STATED THE FACT THAT OFFICER STOKES ASSAULTED APPELLANT WITH CLOSED FIST AND CHEMICAL MISTRAKON SPRAI AND DHO DENIED APPELLANT'S INMATE WITNESSES AND MEDICAL DOCUMENTS TO PROVE TREATMENT FOR INJURIES AND PAIN OF APPELLANT'S INJURIES WERE AVAILABLE AT HEARING. THE DENIAL OF APPELLANT'S WITNESSES AND MEDICAL DOCUMENTS DENIED APPELLANT A FAIR HEARING PURSUANT TO THE FOURTEENTH AMENDMENT DUE PROCESS CLAYS. THE HEARING OFFICER FURTHER NEVER PUT ON RECORD WITH WITNESSES WERE DENIED OR DHO FOR THE WRITING RECORD AND DHO VIOLATED (POLICY 09-22.14-14.1.2-15.1.3)

APPELLANT'S ARGUMENT AGAINST RESPONDENTS BRIEF

ON PAGE 3 OF RESPONDENTS BRIEF, RESPONDENTS STATE THAT OFFICER STOKES REPORTED HE GAVE APPELLANT SEVERAL DIRECTIVES TO STEP BACK INTO HIS CELL. APPELLANT REFUSED ALL DIRECTIVES AND APPROACHED OFFICER STOKES IN A THREATENING MANNER WITH CLOSED FIST. RESPONDENT FURTHER STATED THAT OFFICER BRADY TESTIFIED THAT APPELLANT AND OFFICER STOKES GOT INTO A VERBAL ARGUMENT AND OFFICER STOKES DETECTED APPELLANT TO STEP BACK INTO THE CELL. APPELLANT STEPPED INTO THE DOORWAY, BUT STOKES WAS UNABLE TO CLOSE THE DOOR.

IF THE COURT REVIEW THE DISCIPLINARY TRANSCRIPTS FROM FEBRUARY 7, 2012, THE COURT WILL SEE THAT OFFICER STOKES NEVER DIRECTED APPELLANT TO STEP BACK INTO HIS CELL. INSTEAD IT WAS OFFICER OFFICER BRADY WHO STATED HE INTERVIEWED AND ASKED APPELLANT TO STEP BACK INTO THE CELL AND APPELLANT COMPLIED BUT STOOD IN THE INNER DOORWAY TO THE CELL. OFFICER BRADY FURTHER STATED THAT APPELLANT NOT OFFICER STOKES COULD NOT CLOSE THE CELL DOOR BECAUSE HE WAS STANDING IN THE DOORWAY. OFFICER BRADY GOES ON TO STATE THAT HE WAS STANDING IN BETWEEN OFFICER STOKES AND APPELLANT SO THERE WAS NO WAY OFFICER STOKES COULD HAVE ATTEMPTED TO CLOSE THE CELL DOOR (ALSO NUMBERED IN OFFICER STOKES INCIDENT REPORT STATES THAT HE ATTEMPTED TO CLOSE THE CELL DOOR) THEN OFFICER STOKES REACHED OVER OFFICER BRADY'S SHOULDER AND SPRAIRED CHEMICAL MISTRAKON SPRAI.

THIS TESTIMONY PROVES OFFICER STOKES INCIDENT REPORT AND TESTIMONY TO BE IN VIOLATION TO THE PENALTY OF PERJURY AS OFFICER STOKES INCIDENT IS A SWORN <sup>REPORT</sup> AND IS CLEARLY FALSE.

THE DISCIPLINARY HEARING OFFICER HAD A BURDEN TO PROVE INJURY PURSUANT TO CHARGE § 801 ASSAULT AND BATTERY ON EMPLOYEE; IF OFFICER STOKES RECEIVED ANY INJURIES FROM ALLEGED INCIDENT AS CHARGE 801 IN ITS NARRATIVE STATES WITHIN ITS LAST TWO SENTENCES (WHICH SUCH HITTING, STRICKING, THREATENING, OR UNAUTHORIZED TOUCHING CAUSES BODILY INJURY), THERE WERE NO MEDICAL REPORTS, USE OFFICER REPORTS, OR AFFIDAVIT AVAILABLE TO PROVE TH OFFICER STOKES SUFFERED ANY INJURIES AS A RESULT OF PHYSICAL CONTACT WHICH IS A REQUIREMENT MENTIONED IN CHARGE 801 NARRATIVE DESCRIPTION. AS THE DISCIPLINARY HEARING OFFICER IS NOT A MEDICAL PHYSICIAN OR NURSE QUALIFIED TO MAKE MEDICAL ASSESSMENT OF NO SORT. SUCH DENIAL OF MEDICAL DOCUMENTS TO BE PRESENT AT HEARING DENIED THE APPELLANT HIS RIGHT TO A FAIR HEARING AND CREATED PREJUDICE AS THE APPELLANT COULD HAVE DOCUMENTATION IN DEFENSE TO PROVE INNOCENTS. FURTHER OFFICER STOKES NEVER STATED IN HIS INCIDENT REPORT OR DURING HIS TESTIMONY THAT HE RECEIVED ANY INJURY WHICH WAS REQUIRED BY CP-2E.14. NO MEDICAL RECORDS EXISTED AS PROOF TO CERTIFICATION SWORN AND SIGNED BY DISCIPLINARY HEARING OFFICER ON DATE SEPTEMBER 14, 2012 STATING THAT THE WHOLE DISCIPLINARY RECORD WAS FILED WITH APPELLANT AND THE ADMINISTRATIVE LAW COURT.

CASES SUPPORTING APPELLANTS DUE PROCESS VIOLATIONS AND DENIAL OF WITNESSES AND EVIDENCE

FRANCIS V. COUGHLIN 841 F.2d 43, 46 (2d Cir. 1988); WOLFF V. MCDONNELL 418 U.S. 539, 570-71, 44 S.Ct. 2463, 2481-82, 41 L.Ed. 2d 435 (1974); SCHOOL DISTRICT V. STRACHURA, 477 U.S. 249, 310-11, 106 S.Ct. 2537, 2543, 41 L.Ed. 2d 244 (1986); McMILLAN V. DURANT, 312 S.Ct. 200, 439 S.Ct. 2d 929 (1983)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I ANDREW PLUMMER ON THE 29 DAY OF OCTOBER 2012 IN ENORGE SOUTH CAROLINA; SERVED A COPY OF THE ~~UNDERWRITTEN~~ <sup>FORGOING NOTICE OF APPEAL ON ALL PARTIES TO THIS MATTER BY</sup> ~~UNDERWRITTEN~~ <sup>DEPOSITION</sup> THE SAME IN THE UNITED STATES MAIL; POSTAGE PREPAID; OR IN THE MAIL ROOM OF THE UNDERSIGNED INSTITUTION AND ADDRESSED AS FOLLOWS:

NAME OF PERSON / AGENCY SERVED: ADMINISTRATIVE LAW COURT  
ADDRESSED: ADMINISTRATIVE LAW COURT EDGAR A. BRAUN BUILDING 1205 PENDLETON STREET, SUITE 224 / OFFICE OF GENERAL COUNSEL P.O. BOX 21787 / 4444 BROAD HI ROAD COLUMBIA SOUTH CAROLINA 29221 - 1787

30 EXHIBIT 3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
REQUEST TO STAFF MEMBER

FEB 06 2012

TO: NAME: MR. ARMSTRONG <del>MR. ARMSTRONG</del>	TITLE: IGC <del>IGC</del>	DATE: <del>2-2-12</del> 2-2-12
INMATE'S NAME: ANDREW PLUMMER		SCDC #: 294191
INSTITUTION: KERSHAW C.I.		LIVING QUARTERS: S.M. U 5
MR. <del>ARMSTRONG</del> ARMSTRONG		

I AM REQUESTING FOR COPIES OF THE USE OF FORCE REPORT TO INCIDENT INVOLVING OFC. STOKES ON 1-12-12 AT AROUND 3:00PM IN OAK-B-7 TO BE PRESENT ALONG WITH A MEDICAL REPORT FROM MY TREATMENT BY NURSE MUMBO ON THE NIGHT OF 1-12-12, AND PICTURES THAT WERE TAKEN BY SGT. SANDERS ON 1-12-12 WHILE I WAS IN SIMU. HOLDING CELL, AND THE EXACT AMOUNT OF GAS SPRAYED AND CASSETTE NUMBER AS SUCH IS NOT ON THE INCIDENT REPORT. IT WAS STATED BY YOU AT MY HEARING HELD ON 1-31-12 THAT MY WITNESS ONLY WANTED TO MAKE A VERBAL WITNESS STATEMENT IN MY BEHALF, BUT I REQUEST FOR HIS PRESENCE AT ANY UPCOMING HEARING AND TO BE READ FOR THE RECORD AS OFFICERS INCIDENT REPORT DOES NOT MENTION NONE PRESENCE STATING THAT HE DIDNT WANT TO MAKE A WRITTEN STATEMENT CAUSE ANY VERBAL TESTIMONY AS HEARD BY ANY COURT, WITNESS (KEVEN PENNOGRASS RM 63 OAK-B)

I HAD A HEARING ON 1-26-12 WHICH WAS CONTINUED, THEN ANOTHER HEARING WAS HELD ON 1-31-12 INWHICH I REQUESTED FOR ALL OF THE DOCUMENTS ABOVE DOCUMENTATION TO BE PRESENT AT THE HEARING AND TO BE READ FOR THE RECORD AS OFFICERS INCIDENT REPORT DOES NOT MENTION NONE OF THE DOCUMENTS AS EVIDENCE WHICH IS REQUIRED BY (POLICY OF-22.94-3,3.2) TO INCLUDE A DISCUSSION OF EVIDENCE.

DISPOSITION BY STAFF MEMBER:

Mr Plummer, my (DHO) concern was to find you guilty or not guilty of 801. Pictures were provided as requested. CO Brady gave a verbal testimony. I had no need for the Use of Force or Medical Records.

DATE:

SIGNATURE:

2-7-12

A. Sellers

CERTIFICATE OF APPELLANT

I HEREBY CERTIFY THAT I HAVE SERVED RESPONDENTS A COPY OF RECORD ON APPEAL BY DEPOSITING A COPY OF SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, ADDRESSED TO THE RESPONDENTS AS FOLLOWS:

ANDREW PLUMMER

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

CASE NO.: 12-ALW-04-0377-AP

CHRISTOPHER D. FLORZAN

DEPUTY GENERAL COUNSEL

SOUTH CAROLINA DEPARTMENT

OF CORRECTIONS

P.O. Box 21787

COLUMBIA, SC 29221-1787

ATTORNEY FOR RESPONDENT

151 Andrew Plummer

ANDREW PLUMMER

TYGER RIVER C.I.

SPECIAL MANAGEMENT UNIT

200 PRISON RD

ENDREE SC 29335

APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

APR 29 2014

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE SHIRLEY C. ROBINSON

SC Court of Appeals

CASE No. 12-ALJ-04-0377-AP

ANDREW PLUMMER # 299191

APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY THAT I HAVE SERVED RESPONDENT. A COPY OF APPELLANTS SUPPLEMENTAL RECORD ON APPEAL BY DEPOSITING A COPY OF SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID, ADDRESSED TO THE RESPONDENTS AS FOLLOWS:

CHRISTOPHER D. FLORIAN  
DEPUTY GENERAL COUNSEL  
SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS  
P.O. BOX 21787  
COLUMBIA SC 29221-1787  
ATTORNEY FOR RESPONDENT

1/3/ Andrew Plummer

ANDREW PLUMMER  
TYGER RIVER CORRECTIONAL INST.  
SPECIAL MANAGEMENT UNIT 5  
200 PRISON RD  
ENOREE SC 29335

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

APR 29 2014

APPEAL FROM ADMINISTRATIVE LAW COURT  
ADMINISTRATIVE LAW JUDGE SHIRLEY C. ROBINSON

SC Court of Appeals

CASE NO.: ALJ-04-0377-AP

ANDREW PLUMMER

APPELLANT

V.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

CERTIFICATE OF COUNSEL (RULE 210 9)

APPELLANT OR HIS COUNSEL SHALL CERTIFY THAT THE RECORD ON APPEAL CONTAINS ALL MATERIAL PROPOSED TO BE INCLUDED AND NOT ANY OTHER MATERIAL.

CHRISTOPHER D. FLORIAN  
DEPUTY GENERAL COUNSEL  
SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS  
P.O. BOX 21787  
COLUMBIA SC 29221-1787  
ATTORNEY FOR RESPONDENTS

51 Andrew Plummer

ANDREW PLUMMER  
TYGER RIVER C.I.  
SPECIAL MANAGEMENT UNIT RM 5  
200 PRISON RD  
ENOREE SC 29335