

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 10 2018

SC Court of Appeals

Appeal from Chester County

Brian Gibbons, Circuit Court Judge

Appeal from Magistrate's
Court, Rossville District

2015CP1200179 (Circuit)

2014CV1210400037 (Magistrate)

COURT OF APPEALS CASE NUMBER: 2016-002016

Robert H. Breakfield, as
attorney-in-fact for John D.
Hinson, John C. Hinson, Jerry Hinson,
Kathy Huffstickle, Robert H. Hinson,
Darrell W. Hinson, Lois Hinson,
Tina Jones, George Stanford as
Personal Representative of the
Estate of Linda Stanford,
William L. Hinson, Elaine H. Hensley,
and William C. Hinson, Jr.,

Respondents,

vs.

Mell Woods,

Appellant.

RETURN to Re-Filed Motion to Dismiss, SCACR 240(e)

1. The South Carolina Court of Appeals has already Ruled the Respondent Motion to Dismiss to dismiss the above appeal. The Court's Ruling was filed on March 22, 2018 and the same Order authorized the resumption of this appeal.

2. The respondent attorney, Mr. B. Michael Brackett has now filed what looks like TWO Motions to Reconsider, although *all of the words* in the two motions appear to be the same. This response is meant as a Return to each of the motions.

3. Mr. Brackett is now complaining that the SCRPC 59(e) Motion filed in this case, was served past the 10 days allowed and Mr. Brackett hopes this fabrication will defeat the jurisdiction of the Court of Appeals.

4. Mr. Brackett's latest fabrication is simply not true. There has been a good bit of bad faith on the part of Mr. Brackett which affects this case, and the bad faith has been going on since the start. First of all, Brackett, and Breakfield, both licensed attorneys listed *Elaine H. Hensley*, a deceased person, as one of the plaintiffs below, although Mrs. Hensley had already died at the time, and her Estate had been closed out. Mr. Breakfield witnessed and drew the Deed of Distribution for Mrs. Hensley's probate case, and then knowing full well that she had died several months earlier, and that her estate had closed, and that Mrs. Hensley no longer had a personal representative, Brackett and Breakfield made their own rules and listed Mrs. Hensley as one of the plaintiffs against defendant below and now appellant, Mell Woods. An attorney's authority to act for a client *ends* at the client's death. Carver v. Morrow, 213 S.C. 199, 48 S.E.2d 814 (1948).

5. Rule 11(a) SCRPC, requires that a party or lawyer first read every pleading before signing the pleading. And that the signature itself constitutes a certificate that the lawyer read the pleading. Mr. Brackett's original Motion to Dismiss filed on September 30, 2016 actually has the true statement about the date of service of the Rule 59(e) Motion which Brackett continues to complain about despite the fact that Brackett CERTIFIED to the Court of Appeals the true date of the service of the 59(e) Motion which is "July 28, 2016" according to his timeline shown on pages 3, and 4 of his motion; then the timeline goes on to state that the trial court denied the Rule 59(e) motion on August 31, 2016, with the Notice of Appeal being served on September 09, 2016.

Here is the Timeline [bottom of pg. 3, and top of 4]:

ejection to the county sheriff to eject the Appellant from the subject premises. (Exhibit 1).

Appellant appealed the March 27, 2015 Order to Circuit Court. The subsequent chronology was:

June 1, 2016	Appeal hearing;
July 7, 2016	Circuit Court Order Affirming Magistrate's Court (Exhibit 2);
July 12, 2016	July 7 Order served on Appellant by email and by U.S. mail;
July 18, 2016	date Appellant claimed to have received written notice of the July 7 Order;

July 28, 2016

↓
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Appellant served a Rule 59(e) motion for reconsideration (Exhibit 3);

August 16, 2016

Respondent served a Return to the Rule 59(e) motion, raising the issue of the timeliness of the Rule 59(e) motion (Exhibit 4);

August 31, 2016

Circuit court Order denying Appellant's Rule 59(e) motion (Exhibit 5);

September 9, 2016

Appellant served Notice of Appeal to Court of Appeals. It is this appeal that is the subject of this motion to dismiss appeal. (As of the date of this motion, the undersigned has not received a Notice of Appeal from the Appellant. The undersigned learned of the appeal from the Chester County Clerk of Court and from this Court's letters to the Appellant dated September 28, 2016).

6. Mr. Brackett's true and unequivocal statement about WHEN the Rule 59(e) Motion was actually served is not an accident or Freudian Slip on the part of Mr. Brackett – he did tell the truth to cover himself against any charge of not being candid with a tribunal.

7. But after telling the truth about the true date of the service of the Rule 59(e) motion [July 28, 2016] Mr. Brackett starts on a long and winding discussion about the U.S. Postal Service in order to imply that the Rule 59(e) motion *must have* been deposited in the mail late because he has a tracking record from a post office which shows that the mailer was first scanned at Jacksonville, Florida, Zip 32099. Mr. Brackett seems to imply that someone would drive to Jacksonville, Florida just to deposit mail at 32099. Such is just not what happened and such speculation shows the extreme lengths Mr. Brackett will use to cloud issues. No one can mail anything at 32099 in Jacksonville, Florida because the place is a bulk sorting facility, or "mail factory" if you will, for all mail from south Georgia, and a lot from North Florida, and you do not buy stamps there, and you cannot enter the place unless you are a postal employee.

8. Brackett's speculations, his citations to northern california federal district courts and even citations to the "world-wide web" just do not count because there is real, South Carolina Court of Appeals precedent to cover the exact same fact situation concerning the U.S. Mail service of a Rule 59(e) motion. In 1995, in the case of Green v Green, 320 S.C. 347, 465 S.E.2d 130, Judges CURETON, GOOLSBY, and HEARN, ruled as follows:

[320 S.C. 350] I. The Wife's Appeal

On appeal, the wife argues the trial court erred in failing to dismiss the husband's Rule 59(e) motion where the evidence indicates it was untimely filed. We disagree.

The husband acknowledged he received the March 25, 1994 order on April 2, 1994. The envelope in which he mailed his pro se Rule 59(e) motion was postmarked April 14, 1994, more than ten days after he acknowledged receipt of the order. The motion itself was dated April 12, 1994. In response to the wife's argument that his motion should be dismissed, the husband proffered testimony that he knew the significance of the ten day time limitation and adhered to it by mailing the motion on the tenth day after he received the order. In response to the judge's question regarding the disparity in the dates, the husband's attorney theorized either the envelope was incorrectly postmarked or the husband misstated the date on which he received the order. The judge accepted this explanation and entertained the motion. We find no error in this decision.

A motion to alter or amend a final judgment brought pursuant to Rule 59(e), SCRCF, must be served within ten days of receipt of written notice of entry of the order. Rule 5(b)(1), SCRCF, provides that "service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint." Mailing ordinarily occurs when a document is deposited with the U.S. Postal Service properly addressed with sufficient postage affixed. Southbridge Prop., Inc. v. Jones, 292 S.C. 198, 355 S.E.2d 535 (1987). Any designated mail depository box, whether in a building or along a mail route, constitutes a depository authorized for the receipt and delivery of mail. Rosen v. United States, 245 U.S. 467, 38 S.Ct. 148, 62 L.Ed. 406 (1918). Although the postmark date on an envelope is compelling evidence in cases where timely service through the mail is at issue, we are unaware of any authority, and the wife cites none, indicating the postmark date is dispositive. See William B. Johnson, Annot., Proof of Mailing by Evidence of Business or Office Custom, 45 A.L.R. 4th 476 (1986). Such would assume the infallibility of the U.S. Postal Service, an illogical assumption given the volume of letters and packages constantly being processed and the number of human hands any one envelope [320 S.C. 351] may pass through. We find no abuse of discretion in the trial court's finding that the motion was timely served by mail. Cf. Beckham v. Durant, 300 S.C. 329, 332, 387 S.E.2d 701, 703 (Ct.App.1989) (failure to make proof of service does not affect the validity of service).

9. Appellant and defendant below Mell Woods, has done all that can be done to comply with the Rules of Civil Procedure and the Appeals Court Rules. So far as WHEN the Rule 59(e) mailer to Mr. Brackett was deposited in the U.S. Mail, there should be no question, the Certificate of Service speaks for itself. As to the tracking number; post office tracking numbers are not accurate there are lots of times that the tracking information is changed while the package is enroute and lots of times not scanned at all until delivery.

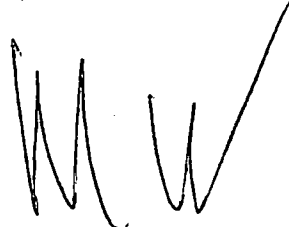
10. Mr. Brackett has *no personal knowledge* as to when the the mailer was deposited in the U.S. Mail – but appellant does know because appellant went to the post office and personally deposited the envelope.

11. Mr. Brackett wants to imply that U.S. Postal workers make no mistakes. Nothing could be more untrue. In the 1950's and 1960's postmen were very honest. And today they are for the largest part still fine folks. But some postal workers are criminals. Today's postal system does have problems with workers who lie, cheat, steal and delay mail. As an exhibit appellant attaches three articles from the last two years where postal workers have been sent to prison for stealing and delaying mail. And three reports is only a small fraction. Mail theft is common all over the country.

12. Mr. Brackett did get his service copy of the pleading and the pleading was timely deposited. Appellant has no control over how the post office delivers mail.

WHEREFORE, appellant respectfully asks that this appeal be allowed to proceed.

This 07 day of April, 2018.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

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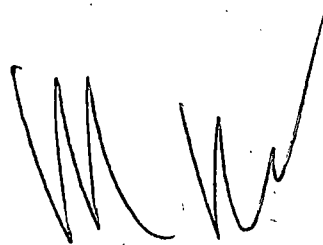
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CERTIFICATE OF SERVICE

Mell Woods hereby certifies that the within and foregoing RETURN TO MOTION has been deposited in the U.S. Mail properly addressed to Mr. B. Michael Brackett at his current address, with proper postage affixed.

This 07 day of April, 2018.



Mell Woods

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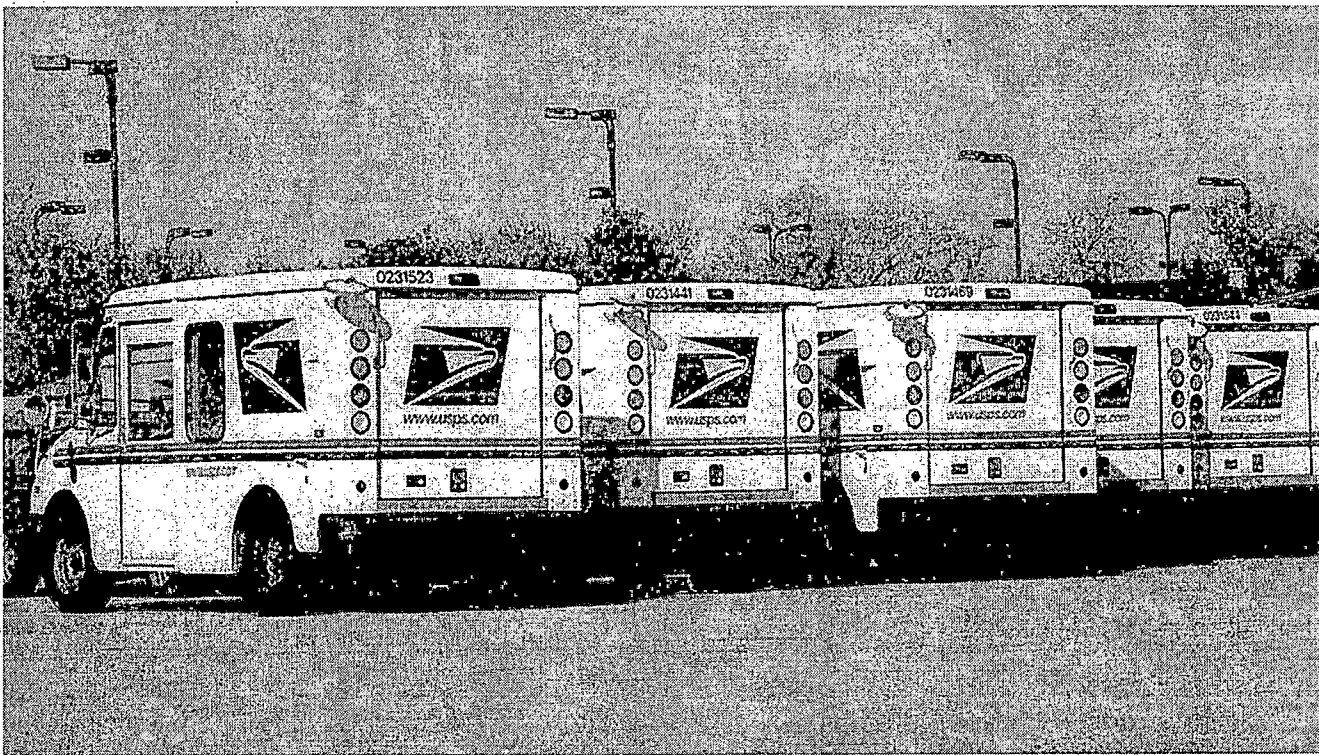


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48,000 pieces of mail found at postal worker's home

SHARE TWEET SHARE EMAIL



(Shutterstock)

Tuesday, August 30, 2016

PLACENTIA, Calif. -- Nearly three dozen people are under arrest or indictment across Southern California following a federal sweep targeting crimes against the U.S. Postal Service and its customers.

Exhibit

Most of those charged are actually postal workers.

The charges include mail theft, stealing packages containing items such as cellphones, prescription drugs and video games and embezzling.

In one case, a postal carrier was allegedly hoarding mail at her home - about 48,000 pieces of mail that were supposed to be delivered to customers in Placentia.

In another case, a former president of the local Mail Handlers Union who worked in Moreno Valley was charged with conspiracy and possession of stolen mail after he was found to possess at least 166 stolen mobile phones that he had been offering for exchange online.

"Mail theft across Southern California has increased recently, which is significant since this type of crime tends to be a precursor to other crimes like identity theft and drug offenses," said U.S. Attorney Eileen M. Decker. "As a result, we are stepping up enforcement activities, including dealing aggressively with corruption within the Postal Service."

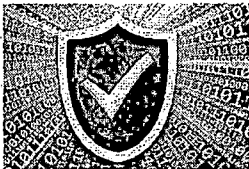
The suspects are from cities across Southern California, including Carson, Long Beach, West Covina, Lake Elsinore, Rancho Cucamonga, Diamond Bar and Compton.

Related Topics:

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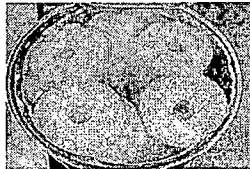
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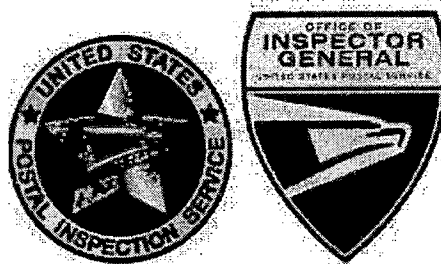
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Florida postal worker guilty of stealing over \$2 million in Social Security checks

Posted on January 12, 2017 by postal



Jury Finds Army Veteran Guilty Of Theft Of Nearly \$300,000 And Making A False Statement

Tampa, Florida – United States Attorney A. Lee Bentley, III announces that a federal jury today found Stacy Darnell Mitchell (48, Tampa) guilty of theft of government property and theft of mail. He faces a maximum penalty of 15 years in federal prison. His sentencing date has not yet been set. Mitchell was indicted on March 1, 2016.

According to evidence presented at trial, Mitchell was a mail

handler who had worked for more than 15 years at the Processing and Distribution Center (PDC) in St. Petersburg, which processes mail

for all of Pinellas County. From January to October 2012, Mitchell stole Social Security benefit checks totaling over \$2 million from that facility. More than 3,000 checks were taken from the PDC in 2012, all of which were destined for disabled or retired beneficiaries living in Pinellas County. Mitchell went on to sell the checks to an accomplice in Tampa, who in turn sold the checks to a network of individuals to be cashed at various convenience stores and check cashing businesses in Florida and elsewhere. Four of Mitchell's accomplices have been convicted of federal charges related to the same theft scheme.

This case was investigated by the United States Postal Service - Office of Inspector General, the Social Security Administration - Office of Inspector the General, the United States Department of Treasury - Office of Inspector General, and the United States Postal Inspection Service, as well as various local enforcement agencies. It is being prosecuted by Assistant United States Attorney Patrick Scruggs

TAMPA, Fla. (AP) - A former Tampa Bay area postal employee faces up to 15 years in federal prison for stealing more than \$2 million in Social Security checks.

A U.S. Attorney's Office news release says jurors found 48-year-old Stacy Darnell Mitchell guilty Wednesday of theft of government property and theft of mail. His sentencing date hasn't been set.

Mitchell was a mail handler for more than 15 years at the processing and distribution center in St. Petersburg. Authorities say Mitchell stole more than 3,000 Social Security benefit checks from the facility from January to October 2012. The checks were sold and cashed at various convenience stores and check cashing businesses.

Four of Mitchell's accomplices have been convicted of federal charges related to the same theft scheme.

Postal Employee Indicted For Theft Of More Than \$2 Million In Social

Federal Disability Retirement -
Postal & Federal Employees FERS/CSRS Medical Retirement.
Disability Law federaldisabilitylawyer.com

Former U.S. Postal Service Employee from Socorro Pleads Guilty to Federal Misdemeanor Embezzlement Charge

By Rick Owens on March 27, 2018 · No Comment

ALBUQUERQUE — 3/26/18 — Adrienne D. Marquez, 42, of Socorro, N.M., pled guilty today in federal court in Albuquerque, N.M, to a misdemeanor charge of theft of government property.

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10 Seconds. (2) Brackets
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2 Search Police Records Lookup Any Name

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Marquez was charged in a misdemeanor information filed on Jan. 23, 2018, with theft of government funds from Jan. 1, 2017 through July 12, 2017,

in Socorro County, N.M. According to the information, Marquez intentionally stole money from the United States in an amount less than \$1,000 by writing herself U.S. Postal Service money orders and not paying the U.S. Postal Service for them.

During today's proceedings, Marquez pled guilty to the misdemeanor information without the benefit of a plea agreement. At sentencing, Marquez faces a maximum penalty of one year in federal prison and a fine up to \$100,000. A sentencing hearing has yet to be scheduled.

This case was investigated by the U.S. Postal Service, Office of Inspector General and is being prosecuted by Assistant U.S. Attorney Paul Mysliwicz.



*Former U.S. Postal Service Employee from Socorro
Pleads Guilty to Federal Misdemeanor Embezzlement*

Charge added by Rick Owens on March 27, 2018

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Cover letter:

Dear Sir or Madam:

Enclosed is an original, plus six copies of the return
of the appellant in the above case. (Return to Motion
to Dismiss)

One Copy is UN bound.

Please file the documents CASE # 2016-002016.

Thanks.