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S.C. SUPREME COURT

Edward Anthony
2210 Bungalow Rd
Augusta Ga 30906

September 13, 2018

To whom it may concern:

This is Edward Anthony and there is a problem yet again. For the second time, on appeal to the Supreme Courts. Ms. LaNelle C. Durant Appellate Defender, represented me 2016, as you can see, and the year Of 2018. She is once again my attorney, which is a conflict of interest case (United States v. Cronic, 466 U. S. 648).

So if my conviction was affirmed the first time on appeal, now on the second time on appeal, she will lose again. When there was no evidence to conviction me in 2015, and not to arrest me 2014. The chain of custody is broken as you can see. The evidence is in violation of the 4th amendment as you can see. It makes my conviction void, bias evidence that was overruled by judge McIntosh at trial, when there was no evidence. I was arrested on March 16,2014. Now on May 21, 2014, the cop obtained the tainted evidence.

So I need another attorney at this time.

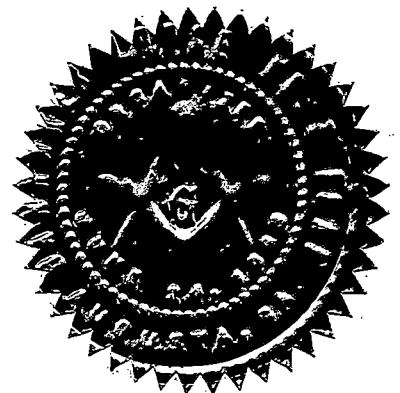
Please in thank you

Edward Anthony

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SEP 17 2018

S.C. SUPREME COURT





SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 07, 2018

Mr. Edward Rodriguez Anthony
2210 Bungalow Road
Augusta, GA 30906

Re: Your case

Dear Mr. Anthony:

I am the lawyer who will be handling your case in the Supreme Court. I will be reviewing the record of the proceedings at the Post Conviction Relief (PCR) court to see what legal errors to present to the Supreme Court on your behalf. I will submit these in the form of a Petition for Writ of Certiorari.

When I file the petition, I will send you a copy of all relevant hearing transcripts and material in the form of an appendix. Only information that was in front of the PCR judge can be included in the Appendix.

You must be patient while the court considers your case. The process is very slow, but there is nothing I can do to speed up the process. It may be a few months before I submit a petition to the Supreme Court and at least a year after that before the Court decides your case. **Some cases take even longer.** You will be notified when the Court makes a decision and letters asking the status of your case do not speed up the process.

Please keep these points in mind. The Supreme Court can only consider the information that was before the PCR court. Any new information cannot be brought to their attention at this point. In addition, the issue must have been addressed in the PCR court's order of dismissal before it can be raised to the Supreme Court.

The court decides the case based on the written material submitted by the attorney general's office and me. It very rarely sets oral arguments, which are an opportunity for me to focus its attention on the information in the petition. If you are in prison, you cannot attend.

In addition, we are not able to visit our clients personally but feel free to call collect.

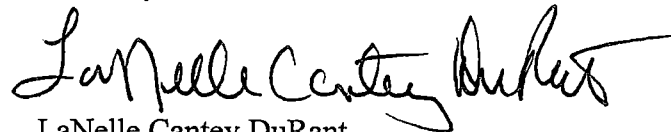
Be assured that I will try my best to find reversible error. I will submit the best petition I possibly can to the Supreme Court.

I receive a tremendous amount of mail and I may not be able to respond to all letters. However, you are free to telephone me collect at the following number: (803) 734-1330. This is the preferred method of us communicating. Regardless, rest assured if you write me a letter about your case, I will read it and carefully consider it as I decide which issue or issues to submit to the appellate court. Please note that the decision about which issues to submit is mine. Only if I submit a "no merits" or Johnson petition, stating that I could not find any good issues, will the court let you submit your own legal arguments.

Finally, if your address changes, you must write and let me know where you are. The Department of Corrections will not notify us of your new address.

I hope this letter answers some of the questions you may have at this time. Again, please do not hesitate to contact me by letter if you have any questions or I may be of further assistance.

Sincerely,



LaNelle Cantey DuRant
Appellate Defender

LCD/lis

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Edward Rodriguez Anthony, Appellant.

Appellate Case No. 2015-001072

Appeal From Aiken County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2016-UP-507
Submitted November 1, 2016 – Filed December 7, 2016

AFFIRMED

Appellate Defender Tiffany Lorraine Butler and
Appellate Defender LaNelle Cantey DuRant, both of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Vann Henry Gunter, Jr., both of
Columbia; and Solicitor James Strom Thurmond, Jr., of
Aiken, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) ("The

admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); *State v. Moultrie*, 316 S.C. 547, 554, 451 S.E.2d 34, 39 (Ct. App. 1994) ("[E]vidence of prior . . . bad acts that is logically relevant is . . . admissible to prove . . . a common scheme or plan that embraces several previous crimes so closely related to each other that proof of one tends to establish the other . . ."); *State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 278 (2009) ("When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)[, SCRE]."); *State v. Pagan*, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006) ("If the defendant was not convicted of the prior crime[s], evidence of the prior bad act[s] must be clear and convincing."); *State v. Clasby*, 385 S.C. 148, 155, 682 S.E.2d 892, 895 (2009) ("When considering whether there is clear and convincing evidence of other bad acts, an appellate court is bound by the trial [court]'s factual findings unless they are clearly erroneous."); *State v. Kennedy*, 339 S.C. 243, 247, 528 S.E.2d 700, 702 (Ct. App. 2000) ("Where the close similarity between the charged offense and the previous bad act[s] enhance[] the evidence's probative value so as to outweigh its prejudicial effect, the evidence is admissible."); *id.* at 248-49, 528 S.E.2d at 703 (finding evidence of defendant's involvement in three prior burglaries was properly admitted because each burglary occurred within a three-month time span, the homes were in the same area of town, each burglary occurred in the early evening hours, and the same type of items were taken each time).

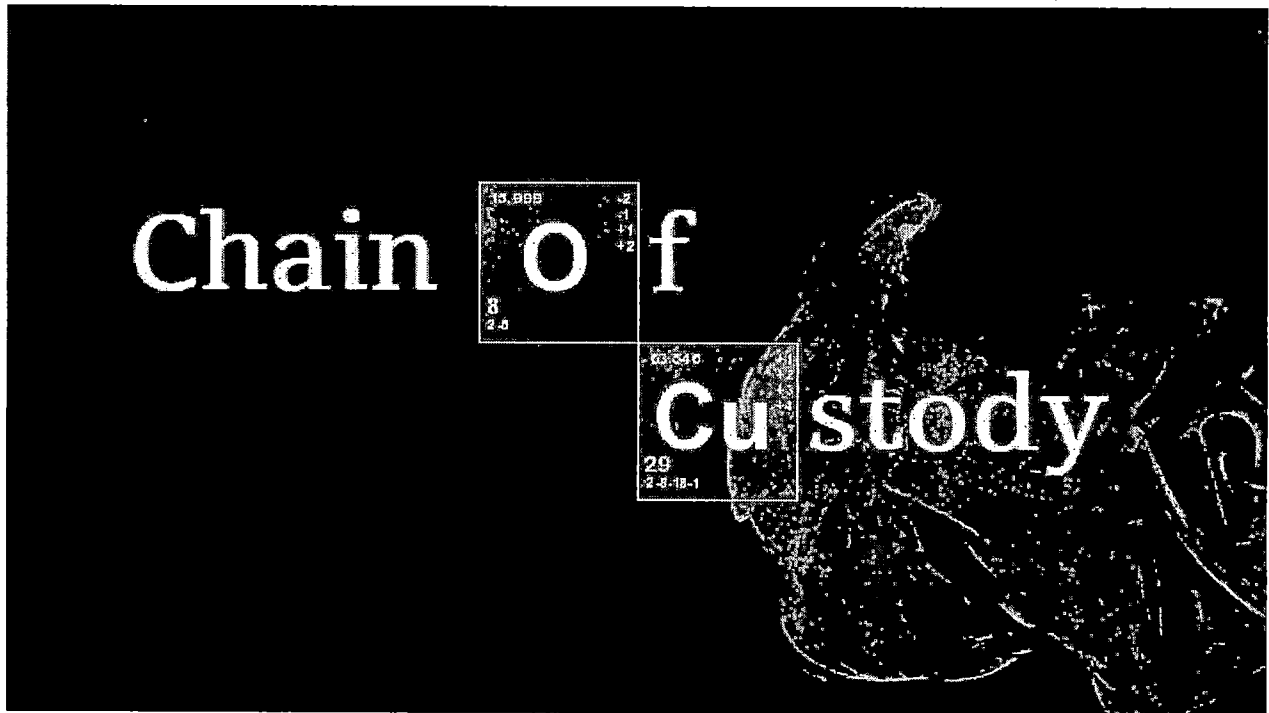
AFFIRMED.¹

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

Pipo Calusa

No one is ever truly free. Yet there is always a choice.



Significance of “chain of custody” in prosecution for violation of R.A. 9165

This article presents the importance of handling of evidence (also called as the chain of custody) in illegal drug cases which is the illegal drug itself and its impact on the fate of the prosecution’s success. The article gives an overview of the concept of chain of custody, how the Supreme Court decided various cases involving lapses in this procedure as required by law and the author’s corresponding analysis and conclusion thereto.

The drug is the crime itself

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Guzon, G.R. No. 199901, October 9, 2013; People v. de Guzman, G.R. No. 186498, March 26, 2010) In both cases of illegal sale and illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the corpus delicti. (*People v. Perez, G.R. No. 199403, June 13, 2012*) Hence, absent the seized illegal drug (or at least absent proper identification of the same during the trial), there is no crime to speak of.

Chain of custody defined

Nowhere in R.A. No. 9165 where the term "chain of custody" is defined. However, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements the said law provides the meaning of chain of custody, to wit:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;

The importance of establishing the chain of custody over the seized drug is explained in the case of *People v. Beran (G.R. No. 203028, January 15, 2014)*:

"The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized drug are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the

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Every link in the chain of custody must not show any possibility of tampering, alteration or substitution. However, it is accepted that a perfect chain is not the standard. Nonetheless, two crucial links must be complied with. First, the seized illegal drug must be marked in the presence of the accused and immediately upon confiscation. This marking must be supported by details on how, when, and where the marking was done, as well as the witnesses to the marking. Second, the turnover of the seized drugs at every stage – from confiscation from the accused, transportation to the police station, conveyance to the chemistry lab, and presentation to the court must be shown and substantiated. (*People v. Abdul, infra*)

In case of a buy-bust operation, the Court in *People v. Salvador (G.R. No. 190621, February 10, 2014)* laid down the links that must be established in the chain of custody, to wit: "first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

Thus, failure to establish through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. (*de Guzman, supra*) Simply stated, a broken link in this chain warrants the acquittal of the accused no matter how guilty he appears to be.

Exception to the rule

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that non-compliance with the procedure shall not render void and invalid the seizure of and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two (2) requirements were met before any such non-compliance may be said to fall within the scope of the proviso.

Failure to prove entitlement to the application of the proviso, the arresting officers'

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Duty of the arresting officers

Section 21(1) of R.A. No. 9165 provides the procedure to be followed by the arresting officers for the seizure and custody of the illegal drugs, to wit:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

The above provision is implemented by Section 21(a), Article II, of the IRR of R.A. No. 9165 which states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the

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thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures ; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

It is important that the seized illegal drug be immediately marked since marking is the start of the custodial link. Such marking will be used as a reference of the succeeding handlers of the seized contraband. It will also serve to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence. (*People v. Sabdula, G.R. No. 184758, April 21, 2014*)

"Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. (*Ibid.*)

Neither R.A. No. 9165 nor its implementing rules provide the rule on marking in cases of warrantless seizure. However, the Court in *People v. Sanchez (G.R. No. 175832, October 15, 2008)* held that consistent with the chain of custody rule, the marking of the illegal drugs seized without warrant must be done **immediately upon confiscation** and **in the presence of the accused** to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.

It should be noted also that while the first sentence of the above-cited provision of the IRR of R.A. No. 9165 provides that the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same, the second sentence makes a distinction in physical inventory and photograph of evidence between warrantless seizures and seizures by virtue of a warrant.

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inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value. (*Beran, supra*)

Strict application

It was held in a long line of cases that the Court should acquit the accused on reasonable doubt in a drug case if there are any irregularities attending the chain of custody over the seized illegal drugs. This is in harmony with the rule in criminal law that penal laws are strictly construed against the government and liberally in favor of the accused.

In *People v. Sabdula (Sabdula, supra)*, the Court acquitted the accused for lack of conclusive identification of the illegal drugs allegedly seized due to failure of the police to mark, inventory and photograph the same. It held that the failure of the prosecution to establish the chain of custody caused by the procedural lapses committed by the apprehending team makes it uncertain whether the illegal drugs seized from the accused was the same illegal drugs that were brought to the crime laboratory for chemical analysis, and eventually offered in Court as evidence. Thus, there is a reasonable doubt as to the guilt of the accused, as well as to the authenticity of the corpus delicti – the body of the crime.

It also held that while the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly, such presumption is effectively destroyed by the procedural lapses tainted with irregularities. Also, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. (*Ibid.*)

Likewise, in the case of *People v. Beran (Beran, supra)*, the accused was acquitted in view of the absence of inventory and photograph of the seized evidence and the fact that the very identity of the subject drug cannot be established with certainty by the testimony alone of the arresting officer. The rule requires an independent proof of

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Also in the case of *People v. Guzon (Guzon, supra)*, the accused upon appeal raised the issue, among others, that the asset who acted as the poseur-buyer was not identified and was never presented to the witness stand. The Court held that the absence of the poseur-buyer as a witness is fatal to the prosecution's case since he is the only person who personally witnessed the transaction during the buy-bust operation. Hence, the accused was acquitted based on reasonable doubt.

In the absence of neither the poseur-buyer's nor of any eyewitness' testimony on the transaction, the prosecution's case fails. While the Court, in several instances, has affirmed an accused's conviction notwithstanding the non-presentation of the poseur-buyer in the buy-bust operation, such failure is excusable only when the poseur-buyer's testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction. (*Ibid.*)

The case of *People v. Salvador (Salvador, supra)* however, is different in a sense that the Supreme Court affirmed the conviction of the accused. In his argument for acquittal, the accused-appellant alleges the failure of the buy-bust team to immediately photograph and conduct a physical inventory of the seized items in his presence. The Court in striking down the accused's contention that the marking of the seized sachets of shabu should have been made in his presence while at the scene of the crime instead of in the police station, held that pursuant to IRR of R.A. 9165, in a buy-bust situation, the marking of the dangerous drug may be done in the presence of the violator in the nearest police station or the nearest office of the apprehending team. This must be distinguished from a search and seizure by virtue of a warrant in which case physical inventory and marking is made at the place where the search warrant is served.

The Court also said that the failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not ipso facto result in the unlawful arrest of the accused or render inadmissible in evidence the items seized. This is due to the proviso added in the implementing rules stating that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have not been preserved. What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused. (*Ibid.*)

It further provided that the failure of the arresting officer to immediately recall his

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Lastly, the Court is not convinced with the accused's contention that coordination with the PDEA in a buy-bust operation is an indispensable requirement the absence of which renders the operation fatally flawed. The Court said that while perhaps ideal, it is not an indispensable element of a proper buy-bust operation; it is not invalidated by mere non-coordination with the PDEA. (*Ibid.*)

Broken chain, when raised for the first time on appeal

In *People v. Abdul* (G.R. No. 186137, June 26, 2013), accused on his appeal with the Court of Appeals raised for the first time the question of admissibility of evidence on the ground of a violation of the rule on the chain of custody. The CA rendered a judgment affirming conviction and held, among others, that the accused could not raise on appeal the issue of non-compliance with the chain-of-custody rule if he had failed to do so before the trial court. The Supreme Court however, reversed the decision and acquitted the accused based on reasonable doubt. In resolving this particular issue, the Court said that while points of law, theories, issues, and arguments should be brought to the attention of the trial court as these cannot be raised for the first time on appeal, an exception to this rule arises when there is plain error. An instance of plain error is overlooking, misapprehending, or misapplying facts of weight and substance that, if properly appreciated, would warrant a different conclusion. This case falls under this exception because the CA, in appreciating the facts, erred in affirming the RTC's ruling that there was compliance with the rule on the chain of custody.

Conclusion

As can be seen from the vast number of illegal drug cases where the accused was acquitted by the Supreme Court due to broken chain of custody, it is evident that the acquittal of the accused based on reasonable doubt is attributed to the procedural lapses committed by the apprehending team. It is ironic therefore that notwithstanding the fierce structure of the substantive law, the culprit could still be freed merely because of the lack of proper training and knowledge of the law enforcers regarding the law they enforce. On the bright side nonetheless, the purpose of the law and jurisprudence on the strict compliance with the procedural requirements is to prevent an innocent be put behind bars by reason of implanting evidence against him or what we call as "frame-up." Though this defense were already snubbed by the Supreme Court in a number of cases as the accused failed to convince the Court otherwise.

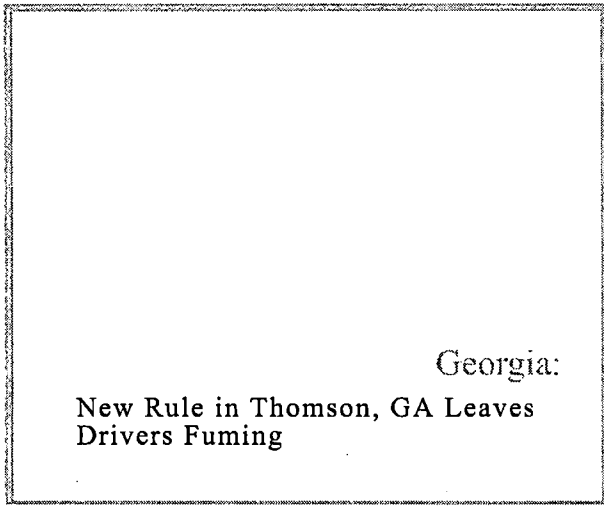
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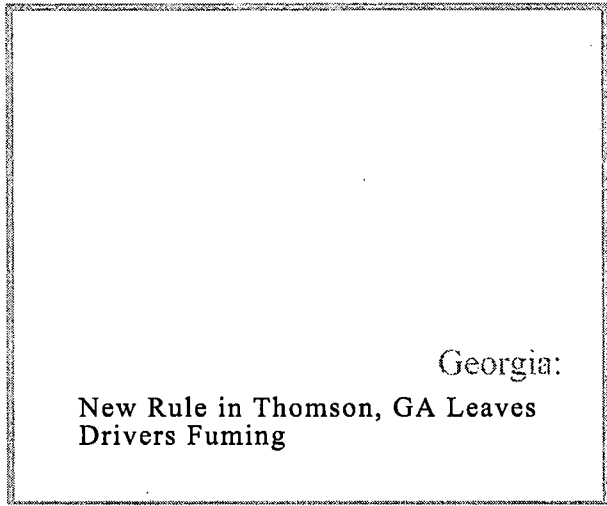
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in consonance with the principle of *dura lex, sed lex*. R.A. 9165 is not perfect, as all laws are. Given these flaws in our criminal justice system, what is ironic is the fact that our careless and negligent law enforcers make the same worse. Our laws which are supposed to be the tool in punishing criminals become the very same tool they used to evade State prosecution.

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Pipo Calusa

Pipo is a law student of Arellano University. [View all posts by Pipo Calusa](#) →

June 16, 2015 Pipo Calusa buy-bust, chain of custody, evidence, illegal drugs, marijuana, marking, shabu

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**Excessive
Force By
Police In
Violating 4th
Amendment**

STATE OF SOUTH CAROLINA)
COUNTY/MUNICIPALITY OF North Augusta)

IN THE MAGISTRATE/MUNICIPAL COURT
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA)
v.)

Race Black Sex Male Age _____
DOB 03/29/1979 SSN 252-35-6831

EDWARD RODRIQUEZ ANTHONY
Defendant

SID # _____

Charges were disposed of in the court indicated below:

Magistrate Municipal

AKA _____

I, Thomas P. Murphy, Municipal Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended by dismissal, *nolle prossed*, or the defendant was found not guilty on 09/27/2017, and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed pursuant to §17-22-950 and/or sealed pursuant to §17-1-40 at no cost to the accused.

Warrant/Ticket/Courtesy Summons No. 90065-GQ Date of Arrest 03/16/2014 Place of Arrest Aiken County, S.C.
Arrest Charge RESISTING ARREST

Warrant/Ticket/Courtesy Summons No. 90066-GQ Date of Arrest 3/16/2014 Place of Arrest Aiken County, S.C.
Arrest Charge DISORDERLY CONDUCT

The charge(s) covered by this order was not dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, conditional discharge, or any other statutorily authorized diversion program operated by a solicitor's office. The dismissal did not occur at a preliminary hearing and the accused does not have charges pending in summary court and a court of general sessions that arise out of the same course of events.

I find that §17-22-950 has been complied with as follows (check one):

- The defendant was fingerprinted.
- The defendant was not fingerprinted. The defendant has made application to the summary court for expungement pursuant to §17-22-950(B).

IT IS ORDERED that all records relating to such arrest or issuance of ticket or courtesy summons and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency, except for the following: arrest and booking record, associated bench warrants, mug shots, and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); pursuant to §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order. Criminal charges must be removed from all Internet-based public records no later than thirty days from the disposition date.

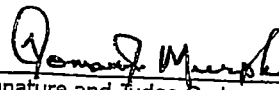
KELLY ZIER

SUZANNE HAYES

Arresting Officer/Prosecutor/Affiant (Circle One)
(To Verify Accuracy of Disposition)

Name of Defense Counsel and SC Bar # (if represented)

Thomas P. Murphy



Printed/Typed Judge Name

Judge Signature and Judge Code

Signed this 1st day of Nov., 20 17

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
CITY OF NORTH AUGUSTA

I do hereby certify that the foregoing constitutes a true and correct copy of the original document which has been filed in the office of the Clerk of Court

Date: 3rd day of NOV, 2017

For SLED internal use only: Expunged by SLED by: _____

Handcuffs Or See pages.

look

Handcuffed

*

161r

All along

Fake statement

UNconstitutional

lying under oath

Misconduct
Never Read my Rights

Its a camera is the p

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 that I would detain the Defendant and proceed to the loss
2 prevention office to further investigate the case.

- 3 Q. * Was he arrested at this point? *Go to page 176* *

4 A. * No, sir. He was not. ** Deputy Smith lied under oath*

5 Q. Was he being combative continually or just your
6 initial approach?

7 A. * Yes, sir. He continued to be. Attempted to pull
8 away when we attempted to detain him. *

9 Q. * All right. Was he under arrest at this point?

10 A. * No, sir. He was not.

11 Q. What did you do when you got back to the loss
12 prevention office?

13 A. I advised the Defendant of his Miranda warnings.
14 He stated that he understood his rights under Miranda.
15 And I asked him if he wanted to talk to me without an
16 attorney present and he just continued to talk.

17 Q. * At this point was he under arrest? *He never Read Rights*

18 A. * No, sir. He was not.

19 Q. * At what point did he become under arrest?

20 A. * After obtaining the loss prevention associate's
21 statement and viewing video surveillance and seeing that
22 both coincided with one other, I determined that I had
23 probable cause to arrest the Defendant for shoplifting.

24 Q. So you didn't just take the statement of
25 Ms. Singletary, you watched the video to confirm?

Handwritten On See pages.

look *

Handwritten. 164
all along False testimony,
lying under oath
Unconstitutional
Rights Violated

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 A. * I advised the Defendant that he was being placed
2 into -- being arrested for shoplifting. At that point the
3 * Defendant began to yell and grabbed ^{"clear"} -- he was sitting in a
4 chair outside the loss prevention office. * He grabbed onto
5 the chair and would not release it even after we commanded
6 him. -- or excuse me, after I commanded him to do so.

7 Q. What are you trained to do in these situations?

8 A. In a situation like that with a passive-resistant
9 individual, we're trained to attempt first to contain them
10 without force. If that does not work, we are taught soft,
11 empty-hand control techniques such as pain compliance
12 measures on nerves. I attempted to use a soft, empty-hand
13 control technique on the hypoglossal nerve which is
14 located in the jaw, on the notch right there, with my
15 thumb.

16 Q. What was the result of that technique?

17 * A. It was ineffective.

18 * Q. What are you trained to do after that?

19 * A. At that point we are trained if soft, empty-hand
20 control technique does not work we transition to
21 intermediate weapons such as the X-26 taser. *

22 * Q. And was that used in this instance?

23 * A. Yes, sir. It was.

24 * Q. By whom?

25 * A. Public Safety Officer Nichols used it.

Handcuffs been on see pages.

lied under oath. LOOK
Handcuffs on 176 *
False testimony
IM Constitution Violated
Rights Violated

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 belly and you searched him, you said he was detained. At
2 that point did you put him in handcuffs? *

3 A. Yes, sir *

4 Q. * And what's the wording y'all would use? Double
5 locked and

6 A. * Check for proper fit and double locked.

7 Q. * And y'all escorted him to loss prevention?

8 A. * Yes, sir.

* Go back to page 161
* Deputy Smith has lied under oath *

9 Q. * Did you ever remove those handcuffs?

10 A. * No, sir.

11 Q. Now, can you describe the scene in the loss
12 prevention office? How big an office is that?

13 A. I don't know the exact dimensions to describe to
14 you. It's --

15 Q. Bigger or smaller than the jury box?

16 A. I would believe smaller than the jury box.

17 Q. So it's tight quarters?

18 A. Myself and the loss prevention associate were in
19 there.

20 Q. * And my client?

21 A. * Your client was sitting in the hallway outside.

22 Q. * Okay. And are there cameras in the loss prevention
23 area as well? [Yes it is there. He the officer looked at it.]

24 A. * No, sir. To the best of my knowledge there are
25 not. [He Lied: it is A surveillance camera back there in the room.]

Handcuffs on. See pages.

Lying Under Oath *

YES LOOK #

False testimony
Unconstitutional
Rights Violated

DANIEL DAVID SMITH -- CROSS BY McMILLIAN

1 Q: ♡ Now, you said he was seated in a chair?

2 A: ★ Yes, sir.

3 Q: ♡ Did the chair have arms? Yes, the chair had arms to grab *

4 A: ★ I don't recall. I'm sorry.

5 Q: ♡ But he was handcuffed this entire time?

6 A: ★ Yes, sir. He was.

7 Q. Now, could I ask you to do something for me? Would
8 you step down here in front of the jury with me? And I
9 assume to apply the pressure, you need to approach the
10 suspect from behind?

11 A. (No audible response.)

12 Q. ♡ Can you demonstrate where exactly that is for the
13 jury?

14 A: ★ Yes, sir. It is right here in the notch in your
15 jaw, right where my thumb is. * CHOKING on the floor happen.

16 Q. * Now do you apply pressure to both sides?

17 A. * In this occasion I more than likely would have
18 applied to one side. The other officer was on the other
19 side.

20 Q. ♡ And it's with your thumb?

21 A. * Yes, sir.

22 Q. ♡ Okay. And when that didn't work you claim that he
23 was holding onto a chair with both hands handcuffed behind
24 his back.

25 You can take your seat. I'm sorry.

DANIEL DAVID SMITH - CROSS BY McMILLIAN

lying under oath
Handcuffed
All Along
tased in cuffs

178
False testimony
Unconstitutional
Rights Violated

1 A. Can you repeat the question, please?

2 Q. * When applying pressure to his hypoglossal nerve,
3 when that didn't work you had to deploy a drive stun, I
4 believe was your testimony?

5 A. Yes, sir. It was.

6 Q. * And that was while his hands were behind his back?

7 A. * Yes, sir. See pages 203

8 Q. * Okay. Is there any truth to that rumor that you
9 have to be tased before you can carry a taser?

10 *A. I mean, it depends on the department, I assume. * In
11 my department it is not policy. *

12 *Q. Okay. So you've never been tased before?

13 A. Yes, sir. I have.

14 Q. You have?

15 A. I volunteered to be tased.

16 Q. What's that feel like?

17 A. Not fun.

18 Q. Not fun.

19 Judge, if I may have just a moment? (Pause.)

20 Judge, I don't think I have any further questions.

21 THE COURT: Okay. Redirect?

22 MR. SLOCUM: Briefly, Judge.

23

24

25

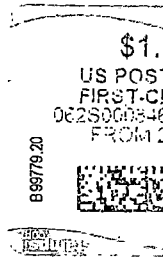
U.S. Department of Justice
Federal Bureau of Investigation

151 Westpark Boulevard
Columbia, SC 29210-3857

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SQD 3

Edward Anthony
2210 Bungalow Road
Augusta, GA 30906



Judge R. Lawton McIntosh

Overruled to tainted evidence in my case that has May 21, 2014, when I was arrested on March 16, 2014

4th Amendment Violation

The Fourth Amendment provides safeguards to individuals during searches and detentions, and prevents unlawfully seized items from being used as evidence in criminal cases. The degree of protection available in a particular case depends on the nature of the detention or arrest, the characteristics of the place searched, and the circumstances under which the search takes place.

14 Amendment Violation

The Equal Protection Clause is part of the **Fourteenth Amendment** to the United States Constitution. The clause, which took effect in 1868, provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws".

28 U.S. Code § 144 - Bias or prejudice of judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

(June 25, 1948, ch. 646, 62 Stat. 898; May 24, 1949, ch. 139, § 65, 63 Stat. 99.)

Exclusionary Rule

The exclusionary rule prevents the government from using most evidence gathered in violation of the United States Constitution. The decision in Mapp v. Ohio established that the exclusionary rule applies to evidence gained from an unreasonable search or seizure in violation of the Fourth Amendment. The decision in Miranda v. Arizona established that the exclusionary rule applies to improperly elicited self-incriminatory statements gathered in violation of the Fifth Amendment, and to evidence gained in situations where the government violated the defendant's Sixth Amendment right to counsel.

Bradley McMillan Public Defender

Strickler v. Greene, 527 U.S. 263 (1999)

- (a) There are three essential components of a true *Brady* violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. The record in this case unquestionably.

Brady v. Maryland :: 373 U.S. 83 (1963)

The State's intentional suppression of evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), prejudiced petitioner by itself or in combination with the objectively unreasonable performance of her trial counsel? Bradley is a Public Defender. prejudicial **ineffective assistance** found where **counsel failed to investigate** and present highly relevant information

Client-Lawyer Relationship

Rule 1.9 Duties To Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Client-Lawyer Relationship

Rule 1.7 Conflict Of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

**4th
amendment
violation with
illegally
obtained
evidence**

ADDITIONAL NARRATIVE

27

Agency Name: North Augusta Department of Public Safety	ORI #: SC0020300	Report Date/Time: .03/16/2014	OCA #: 14-000676
---	---------------------	----------------------------------	---------------------

18:52

THE STORE AGAIN. R/O WAS ADVISED TO ENTER THE STORE AND APPROACH THE SUBJECT. AFTER R/O ENTERED THE STORE, R/O COULD NOT LOCATE THE SUBJECT. R/O MET WITH THE COMPLAINANT, PATSY SINGLETARY (LOSS PREVENTION), WHO POINTED THE SUBJECT OUT INSIDE OF THE STORE. R/O MET WITH THE SUBJECT AND IDENTIFIED HIM AS EDWARD ANTHONY. MR. ANTHONY IMMEDIATELY RAISED HIS HANDS, HIS SHIRT, AND HIS VOICE AND BEGAN TO YELL, "I DIDNT DO NOTHING". R/O HAD MR. ANTHONY PLACE HIS HANDS ON TOP OF A CLOTHING RACK SO R/O COULD PERFORM A WEAPONS FRISK FOR OFFICER SAFETY PURPOSES. R/O HAD TO COMMAND MR. ANTHONY TO KEEP HIS HANDS ON THE CLOTHING RACK THREE TIMES. AS R/O BEGAN THE WEAPONS FRISK, MR. ANTHONY STATED, "I AINT GOT NOTHING. YOU CAN CHECK MY UNDERWEAR". R/O THEN SEARCHED MR. ANTHONY'S PERSON, AS HE HAD GIVEN CONSENT. R/O DID NOT LOCATE ANY CONTRABAND OR STOLEN ITEMS ON MR. ANTHONY'S PERSON. ✓

STATE OF SOUTH CAROLINA)
COUNTY/MUNICIPALITY OF North Augusta)

IN THE MAGISTRATE/MUNICIPAL COURT
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA)
v.)

Race Black Sex Male Age _____
DOB 03/29/1979 SSN 252-35-6831

EDWARD RODRIQUEZ ANTHONY
Defendant

SID # _____

Charges were disposed of in the court indicated below:

Magistrate Municipal

AKA

I, Thomas P. Murphy, Municipal Court Judge, find that the below charge(s) under the jurisdiction of this Court was ended by dismissal, *nolle prossed*, or the defendant was found not guilty on 09/27/2017, and the defendant is entitled to have all records, including any outstanding associated bench warrants, relating to this offense expunged and destroyed pursuant to §17-22-950 and/or sealed pursuant to §17-1-40 at no cost to the accused.

Warrant/Ticket/Courtesy Summons No. 90065 GQ Date of Arrest 03/16/2014 Place of Arrest Aiken County, S.C.
Arrest Charge RESISTING ARREST

Warrant/Ticket/Courtesy Summons No. 90066 GQ Date of Arrest 3/16/2014 Place of Arrest Aiken County, S.C.
Arrest Charge DISORDERLY CONDUCT

The charge(s) covered by this order was not dismissed or *nolle prossed* because of successful completion of the Pre-Trial Intervention Program, Traffic Education Program, Alcohol Education Program, conditional discharge, or any other statutorily authorized diversion program operated by a solicitor's office. The dismissal did not occur at a preliminary hearing and the accused does not have charges pending in summary court and a court of general sessions that arise out of the same course of events.

I find that §17-22-950 has been complied with as follows (check one):

- The defendant was fingerprinted.
- The defendant was not fingerprinted. The defendant has made application to the summary court for expungement pursuant to §17-22-950(B).

IT IS ORDERED that all records relating to such arrest or issuance of ticket or courtesy summons and subsequent discharge, including associated bench warrants, pursuant to the above-referenced section be expunged and destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency, except for the following: arrest and booking record, associated bench warrants, mug shots, and fingerprints of the defendant shall be retained under seal pursuant to §17-1-40, by law enforcement, detention, correctional and prosecution agencies for three years and one hundred twenty days, and law enforcement and prosecution agencies may retain the information indefinitely under seal for purposes set forth in §17-1-40 (B)(1)(a) and (b); pursuant to §17-1-40 (C)(1), this order does not require the destruction of evidence gathered, unredacted incident and supplemental reports, and investigative files, which statutorily shall be retained under seal for three years and one hundred twenty days, and may be retained indefinitely under seal for purposes set forth in §17-1-40 (C)(1); and information retained under seal by law enforcement, detention, correctional and prosecution agencies pursuant to §17-1-40 is not a public information and is exempt from disclosure, except by court order. Criminal charges must be removed from all Internet-based public records no later than thirty days from the disposition date.

KELLY ZIER

SUZANNE HAYES

Arresting Officer/Prosecutor/Affiant (Circle One)
(To Verify Accuracy of Disposition)

Name of Defense Counsel and SC Bar # (if represented)

Thomas P. Murphy

Thomas P. Murphy
Judge Signature and Judge Code

Printed/Typed Judge Name

Signed this 1st day of Nov., 20 17

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
CITY OF NORTH AUGUSTA

I do hereby certify that the foregoing constitutes a true and correct copy of the original document which has been filed in the office of the Clerk of Court

Date: 2nd day of NOV, 2017

For SLED internal use only: Expunged by SLED by: _____



1163 KNOX AVE
 1163 KNOX AVE
 NORTH AUGUSTA, SC 29041
 (803) 279 - 4420
 STORE MANAGER: WILJ BATTI

See
↓

STORE: 0299 REG: 5064 VOL: 66
 TRAN#: 2373 ASSOC: 003778

ASSOCIATE NAME: JULIAN

SALE:

DENIM PANTS		
690742516534		
62 00 PERM MKDN	1	39 99
KNIT TOPS		
888132374813		
89 50 PERM MKDN	1	49 99
59.99 NEW PRICE		49.99
KNIT TOPS		
888132374813		
89 50 PERM MKDN	1	49 99
59 99 NEW PRICE		49 99

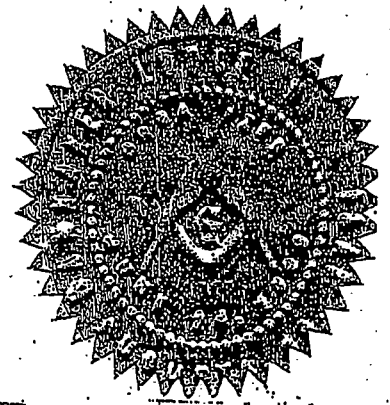
QUANTITY: 003	SUB-TOTAL	139 97
	SC 7% TAX	19 80
	TOTAL	\$ 149.77

← See

YOU SAVED \$ 101 03

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Chain of Custody Report

Report Date: March 21, 2014

Barcode: 14-000185-EV0001
Case Number: 14-000676
Folder Number: EVMAR2014

Description: THREE DISCS CONTAINING VIDEO SURVEILLANCE
Jurisdiction: SC0020300
Evidence Number: 14-000185-EV

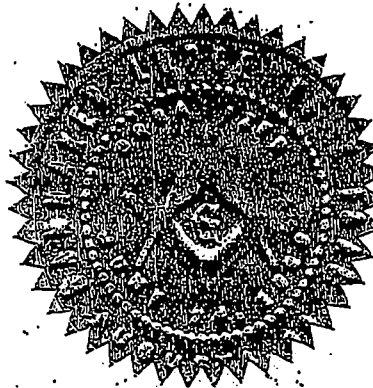
Category: Y Classification: General Model: Prop Code/Description: THREE DISCS CONTAINING VIDEO
Make: Serial No: VIN: Quantity: Color:
Narcotics Type: Measure: Item Status: Evidence
Temporary Location: Temporary Location Date:
Recovery Date: 03/19/2014 10:53:00 Recovery Officer: 197 BUSBEE, CLINT
Recovery Address: 1163 KNOX AVE NORTH AUGUSTA SC 29841
Released By: JC BUSBEE Released To: EVIDENCE CUSTODIAN
Other Jurisdiction:
Associated Numbers:

Involved Parties

<u>Involvement Type</u>	<u>Name</u>	<u>Address</u>	<u>Phone</u>
SUSPECT	EDWARD RODRIQUEZ ANTHONY	2210 BUNGALOW ROAD AUGUSTA GA 30906-	
VICTIM	BELK	1163 KNOX AVENUE NORTH AUGUSTA SC 29841-	803-278-4421

Location/Movement History

<u>Location ID</u>	<u>Officer</u>	<u>Reason</u>	<u>Transaction Date</u>	<u>Entered By</u>
BA03: BASKET 03	SHAW, GEOR 122	evidence	03/20/2014 08:20:19	GEORGE A SHAW
LO003: LOCKER 003	197 BUSBEE, CLINT	EVIDENCE	03/19/2014 11:00:55	CLINT BUSBEE



03/20/2014

Evidence Receipt

Location: BA03

Description: Evidence Permanent Assignment Receipt

Entered By: GEORGE A SHAW

Transaction Date: 03/20/2014 08:20:26

Case Number: 14-000676

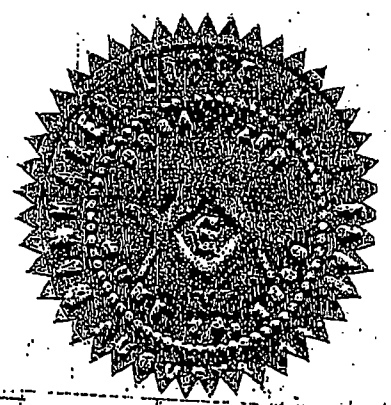
Date/Time of Storage: 03/20/2014 08:20:19

Folder Number: EVMAR2014	Evidence Number: 14-000185-EV	Jurisdiction: SC0020000
Recovery Location: BELK	SC 29841	
Recovery Address: 1163 KNOX AVE NORTH AUGUSTA	Recovery Officer: 197- BUSBEE, CLINT	
Recovery Date: 03/19/2014 10:53:41	Released To: EVIDENCE CUSTODIAN	
Released By: JC BUSBEE		
Other Agency ORI:		
Associated Numbers:		

Barcode: 14-000185-EV0001	Property Classification: General	Category: OTHER ITEMS
Property Code/Description: THREE DISCS CONTAINING VIDEO SURVEILLANCE		
Description: THREE DISCS CONTAINING VIDEO SURVEILLANCE		
Make:	Model:	Serial:
Narcotics Type:	Measure:	
Quantity:		
Item Status: Evidence		

Involvement Type: VICTIM
 Name:
 Address: 1163 KNOX AVENUE NORTH AUGUSTA SC 29841
 Phone: 803-279-4421

Received By : George Shaw
 Date Received : 3/20/14
 Released To : _____



Agency: North Augusta Department of Public Safety
Officer ID/Name:
Date:

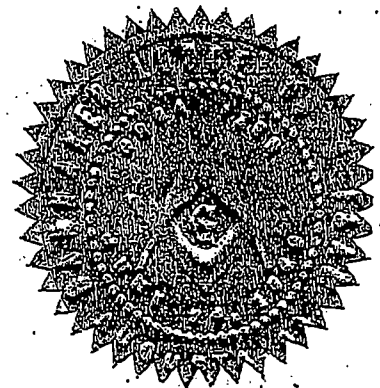
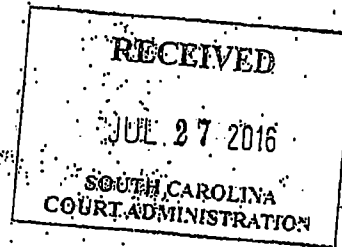
Incident
Incident Number: 14-000676
Case Number: 14-000676

Narrative Title: SUP

14-000676
SHOPLIFTING 3RD OR SUBSEQUENT OFFENSE
DISORDERLY CONDUCT
SUBJECT: EDWARD ANTHONY
SUPPLEMENT

ON 05/21/2014 AT 1900 HOURS, PSO D. SMITH OBTAINED VIDEO AND A COPY OF THE RECEIPT OF THE STOLEN ITEMS FROM BELK. PSO D. SMITH WILL DROP THE VIDEO INTO EVIDENCE AND TURN THE RECEIPT IN TO THE RECORDS DIVISION. PSO D. SMITH ALSO REQUESTED THAT A COPY OF THE IN-CAR VIDEO OF THIS INCIDENT BE OBTAINED. PSO D. SMITH HAS NO FURTHER.

05/21/2014 2100 HOURS
PSO D. SMITH 288



ADDITIONAL NARRATIVE

Name: North Augusta Department of Public Safety	ORI #: SC0020300	Report Date/Time: 03/16/2014 18:52	OCA #: 14-000676
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SUP

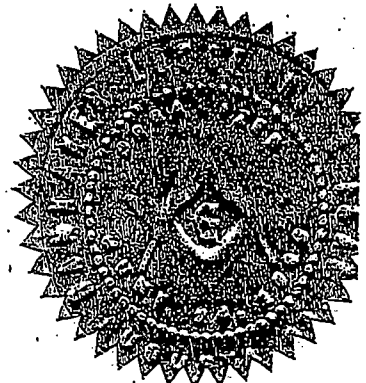
14-000676
SHOPLIFTING
DISORDERLY CONDUCT
SUBJECT, EDWARD ANTHONY
SUPPLEMENT

ON 05/21/2014 AT 1900 HOURS, PSO D. SMITH OBTAINED VIDEO AND A COPY OF THE RECEIPT OF THE STOLEN ITEMS FROM BELK. PSO D. SMITH WILL DROP THE VIDEO INTO EVIDENCE AND TURN THE RECEIPT IN TO THE RECORDS DIVISION. PSO D. SMITH ALSO REQUESTED THAT A COPY OF THE IN-CAR VIDEO OF THIS INCIDENT BE OBTAINED. PSO D. SMITH HAS NO FURTHER.

05/21/2014 2100 HOURS
PSO D. SMITH 288

05/21/2014 2100 HOURS
PSO D. SMITH 288

RECEIVED
JUL 27 2016
SOUTH CAROLINA
COURT ADMINISTRATION



of No
74 Returned Back to Belks See pages.

Time Don't Reflect

Illegal obtained evidence

Objection
tampered
Evidence

109
May 21, 2014
False Testimony

PATSY SINGLETARY-SISO - DIRECT BY SLOCUM

1 MR. SLOCUM: Okay. Your Honor, at this time the
2 State moves to enter Exhibits Two and Four into evidence?
3 THE COURT: Any objection?
4 * MR. McMILLIAN: Yes, sir, Your Honor. There's been
5 no testimony about when those pictures were taken.
6 THE COURT: Lay a little more foundation, please,
7 sir.
8 BY MR. SLOCUM:
9 Q. * When did you take those pictures?
10 A. * Immediately. After every case we have to
11 photograph the evidence.
12 * THE COURT: Okay. They'll be admitted subject to
13 objection.
14 * (State's Exhibit Nos. 2 and 4, photographs,
15 received into evidence.)
16 BY MR. SLOCUM:
17 Q. Can you please tell the jury what you see in
18 Exhibit Number Two?
19 A. * Yes, sir. The receipt. Once we retrieve the items
20 I had Julian which is the store manager, go and make a
21 receipt because we have to submit a receipt along with
22 pictures of the evidence for our records. *
23 Q. And what about State's Exhibit Number Four?
24 A. * These are the Polo shirts I described that I
25 photographed. * I positioned them to where I could get the

Exhibit
(34)

Lying Under Oath. false testimony

5 items

150

She lied
False testimony
Don't Reflect

*PATSY SINGLETARY-SISO - CROSS BY McMILLIAN

1 Q. * That's different from what you testified to
2 earlier, the seven ^{7 items} items; correct? ✓

3 A. * That's five. ^{5 items} It could have been a typo there.
4 This report, again, it is used to kind of do the case
5 report, get the information in but -- *

6 MR. McMILLIAN: Permission to approach, Judge?

7 THE COURT: Yes, sir.

8 BY MR. McMILLIAN:

9 Q. * And then there inside your report there, there is a
10 smaller version of this same picture. I believe it's on
11 the third page. *

12 A. Uh-huh.

13 Q. * And as a part of that report there's a date on that
14 file name. Can you read that date for the jury?

15 A. Where about? I'm sorry.

16 Q. On the third page. It's here.

17 A. Uh-huh.

18 Q. * Just under the date there: *

19 A. * 3-31-14. * March 31, 2014.

20 Q. * Is that the date you would have taken the picture
21 or the date you added the file? *

22 A. * It could have been the date I added the file, but I
23 took the picture immediately.

24 Q. Okay.

25 A. But we go back, we make -- add more notes and

Exhibit
(34)

11/2/01 00101000 Evidence
Tainted Evidence. L0812 * Yes
151

False testimony
lying under oath.
planting Evidence

PATSY SINGLETARY-SISO - REDIRECT BY SLOCUM

1 whatnot. But the official report is the report we give to
2 North Augusta.

3 Q. * Okay. And I believe the State did move the receipt
4 for the goods in which is I believe the fourth page of
5 that report?

6 A. Uh-huh.

-7 Q. * What's the date of that receipt again? Up in the
8 upper right-hand corner.

-9 A. * This says 5-21-14 *

-10 Q. * So those items weren't rang up until May 21st?

11 A. * No, they were rung that day. I'm not for sure why
12 that date is indicating.

13 Q. * But you would agree that receipt that was part of
14 this report that was provided to us reflects that they
-15 were rung up on May 21st?

16 A. * Well, the system, the cash register could have been
-17 off or (Julian probably) -- I'm not for sure. I can't
18 answer for him, but we submit every time a receipt of
19 items and video. I'm not for sure why the receipt reads
-20 that date.

21 MR. McMILLIAN: Okay. One more time, Judge.
22 (Pause.) I don't have any further questions, Your Honor.

23 THE COURT: Redirect?

24 MR. SLOCUM: Briefly, Judge.

25 REDIRECT EXAMINATION

Exhibit
(35)

five. See pages. 166, 172, 167

No Evidence Look 167 *
False Statement
False Claims. Combative

DANIEL DAVID SMITH - DIRECT BY SLOCUM

1 A. In this case because the Defendant was being
2 combative, for our safety and his safety, we determined
3 that we should transport him directly to the Aiken County
4 Detention Center.

5 Q. And at this point did you ever take the pliers and
6 the magnet off of his person?

7 A. No, sir. They were left on him.

8 Q. ★ Okay. Did you ever take any pictures of the,
9 quote, articles of clothing that he alleged to have
10 concealed?

See page 173 No Evidence page 175

11 A. ★ No, sir. I did not.

12 Q. ★ Did you ever find any on his person?

13 A. ★ No, sir. I did not.

14 Q. ★ Did you do any type of forensic testing, any DNA or
15 fingerprints on any type of evidence in this case?

16 A. ★ No, sir. I did not.

17 Q. ★ Was there any reason to?

18 A. ★ No, sir.

19 Q. What, if anything, was said on the way to the jail?

20 A. On the way to the jail the Defendant stated -- he
21 was in the back of my patrol vehicle -- that, and I quote,
22 Could have would have thought about it was not the same as
23 shoplifting.

24 Q. And did you ask a question to give this response?

25 A. No, sir. I did not.

Look
★ 173
False testimony
Under oath
No Evidence

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Q. And he, in fact, immediately said, I didn't do anything?

A. Yes, sir.

Q. And he immediately started lifting his shirt?

A. Yes, sir.

Q. In fact, he exposed his bare belly --

A. Yes, sir.

Q. -- to you?

A. Yes, sir.

See page 167, and 175

Q. ★ There was no merchandise in his waistline?

A. ★ No, sir.

Q. ★ None in his jacket?

A. ★ No, sir.

Q. ★ None in his underwear?

A. ★ No, sir.

Q. ★ You further searched him; correct?

A. ★ Yes, sir. I did.

Q. ★ Did you find any merchandise in that search?

A. ★ No, sir. I did not.

Q. ★ Now, obviously during your search you didn't add anything to his person, you didn't put anything in his pockets?

A. ★ No, sir. I didn't.

Q. ★ You didn't take anything out?

A. ★ No, sir.

2 page.

Evidence See page.

(Date and time Don Retrick
with the crime or Evidence)

False testimony look

174
May 21, 2014 in NH
March 16, 2014

DANIEL DAVID SMITH - CROSS BY McMILLIAN

Planting of Evidence, faked evidence, illegally obtained evidence

1 Q. And you never did --

2 A. I apologize. I'm sorry. I did remove -- once I

3 located the adjustable channel-lock pliers and what

4 appeared to be a magnet, I did remove those to see what

5 they were.

6 Q. Okay. But at some point you put those back in his

7 pocket?

8 A. Yes, sir. They remained on his person.

9 Q. Okay. So, everything he had on his person is the

10 same stuff he would have had when he got to the jail?

11 A. Yes, sir.

12 Q. * Did you ever go back out to Belk's to collect any

13 photographs?

14 A. * I did go back out. I'm unsure of the exact date.

15 I have a report if you'd like for me to check.

16 Q. Would you reference that?

17 A. * Yes, sir. (Looking at document.)

18 * Okay. According to my supplemental report to my

19 original incident, on May 21st, 2014, at seven p.m., I

20 returned to Belk. I obtained a copy of the receipt of the

21 items in question and obtained a video surveillance,

22 dropped it into evidence.

23 Q. May I see what you're referencing?

24 A. Absolutely.

25 MR. McMILLIAN: Permission to approach, Judge?

Exhibit
(38)

Dash-Cam 200K
withheld by Department. * 175 *
No Evidence
False statement
False testimony

DANIEL DAVID SMITH - CROSS BY McMILLIAN

1 THE COURT: Yes, sir.

2 * THE WITNESS: Here's the supplemental.

3 BY MR. McMILLIAN:

4 Q. * And in that supplemental you also requested that a
5 copy of your in-car video be added? - Dash - Cam

6 A. * Yes, sir. I did. "Brady Violation"

7 Q. * We were never provided any of that, though, were
8 we?

9 A. * No, we were not.

10 Q. So we don't have any proof of this alleged
11 statement that you say he made in the car?

12 A. No, sir.

13 Q. * You went back out and collected the video on May
14 21st? Turn Evidence May, illegal obtained. Planting Evidence

15 A. * Yes, sir. True. It unconstitutional. "Rights Violated."

16 Q. * Did you collect any other evidence, any broken
17 security tags?

18 A. * No, sir. I did not.

19 Q. * Any merchandise?

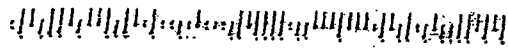
See page 173, and 167

20 A. * No, sir. I did not.

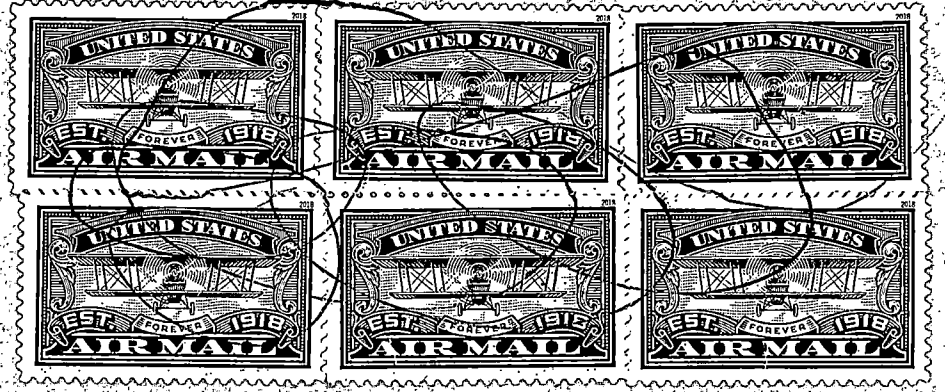
21 Q. * So when the solicitor asked you earlier if you
22 conducted any forensic stuff, that's because you didn't
23 have anything to conduct any tests on; correct?

24 A. * No, sir. I did not.

25 Q. Let's talk for a minute. After he exposed his



D Bungalow Rd
Wsta, Ga 30906



Supreme Court of South Carolina
1231 Gervais St
Columbia, SC