

APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

No. 21-5552

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ABRAHAM A. AUGUSTIN,

Defendant-Appellant.

)
)
)
)
)
)
)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
TENNESSEE

FILED

Feb 11, 2022

DEBORAH S. HUNT, Clerk

ORDER

Before: WHITE, THAPAR, and READLER, Circuit Judges.

Abraham A. Augustin, a federal prisoner proceeding pro se, appeals the district court's order denying his motion for relief from judgment, filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Augustin's Rule 60(b) motion sought relief from the district court's April 19, 2019, order denying his "petition for the return of seized property," filed pursuant to Rules 32.2(a) and 41(g) of the Federal Rules of Criminal Procedure. Augustin has filed a motion for appointment of counsel. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In December 2009, during a drug deal gone wrong, Augustin kidnapped the middleman at gunpoint and—after the middleman was rescued—tried to hire a hitman to murder him and two other witnesses. The Bradley County (Tennessee) Sheriff's Department subsequently arrested Augustin. He was charged in state court and released on bond. He then attempted to leave town but was intercepted and arrested by FBI agents. Between these two arrests, Sheriff's deputies and FBI agents seized, among other things, \$15,640 in United States currency, a 2003 BMW 745LI vehicle,

and a U-Haul rental truck containing personal property. In January 2010, at Augustin's request, the Bradley County Sheriff's Department released the contents of the U-Haul to a third party. The Bradley County Sheriff's Department also initiated state forfeiture proceedings against the seized currency and the BMW. Those proceedings were completed on May 5, 2010, and April 15, 2011, respectively.

In October 2010, a federal jury convicted Augustin of kidnapping, in violation of 18 U.S.C. § 1201; using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A); being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); using the mail with the intent to commit murder for hire, in violation of 18 U.S.C. § 1958; attempting to obstruct and influence a trial by attempting to have witnesses killed, in violation of 18 U.S.C. § 1512(c)(2); and three counts of hiring a person to kill a witness with the intent to prevent the witness's attendance and testimony at trial, in violation of 18 U.S.C. § 1512(a)(1)(A). The district court sentenced Augustin to a total term of 500 months of imprisonment, and we affirmed Augustin's convictions and sentence on direct appeal. *United States v. Dais*, 559 F. App'x 438, 450 (6th Cir. 2014). The district court later reduced Augustin's sentence to 380 months' imprisonment after vacating his § 924(c)(1)(A) conviction in light of the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). See *United States v. Augustin*, 16 F.4th 227, 231 (6th Cir. 2021).

In September 2015, Augustin filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, as well as a separate Rule 41(g) motion seeking the return of his seized property. The government opposed both motions, arguing with respect to the latter that the property at issue was not in the federal government's possession because it "was seized and disposed of by state and local authorities, in accordance with state procedures." In support of its position, the government submitted an affidavit from Wayne Jackson, a retired FBI special agent with personal knowledge of Augustin's case, who averred that "in January 2010, at the request of Abraham Augustin, the contents of the U-Haul were released to" a third party and that "[a]t no point did the Federal Bureau of Investigation, nor any other federal agency, exercise custody or control of the U-Haul or the contents of the U-Haul." The district court denied Augustin's § 2255

motion, and this court declined to issue Augustin a certificate of appealability. *Augustin v. United States*, No. 18-6007 (6th Cir. Feb. 1, 2019) (order).

In November 2018, Augustin filed a motion for summary judgment, in which he restated the substance of his Rule 41(g) motion. He also filed a petition for a writ of mandamus, in which he asked this court to compel the district court to rule on his request for the return of his seized property. On April 19, 2019, the district court denied Augustin’s motion after determining that local law enforcement had seized the property at issue and that “the United States has never been in possession of” it. We affirmed. *United States v. Augustin*, No. 19-5567 (6th Cir. Jan. 10, 2020) (order).

In January 2020, Augustin filed a Rule 60(b) motion for relief from the district court’s order denying his Rule 41(g) motion based on allegedly newly discovered evidence—namely, four exhibits, which he purportedly discovered on February 23, 2019, that allegedly show that Agent Jackson constructively possessed his seized property. Augustin claimed that the discovered exhibits prove that Agent Jackson instructed the Bradley County Sheriff’s Office to seize and hold the U-Haul (and its contents) on his behalf. According to Augustin, this evidence also shows that Agent Jackson signed the paperwork to have the U-Haul towed from the scene of his arrest to the Bradley County Sheriff’s Office’s impound lot. Augustin claimed that this new evidence proves that the federal government committed fraud on the court when it filed Agent Jackson’s allegedly perjured affidavit to defeat his Rule 41(g) motion. Rather than seeking the return of the seized property, Augustin asked the district court to reopen his case, find that the government had committed fraud, find the government liable for the loss and deprivation of his personal property, and permit him to seek damages. The government opposed Augustin’s Rule 60(b) motion, reiterating its position that the federal government never possessed the seized property. The district court denied Augustin’s Rule 60(b) motion, concluding that Augustin was not entitled to relief under Rule 41(g) because he did not dispute that the federal government does not currently possess the property at issue. Alternatively, the district court concluded that Augustin was not entitled to any of his requested relief because “[n]either Federal Rule of Civil Procedure 60(b) nor

evidence did not entitle Augustin to relief under Rule 41(g) because it was undisputed that the federal government does not currently possess the property at issue. *Id.* (citing *United States v. Stevens*, 500 F.3d 625, 628 (7th Cir. 2007) (holding that “if the Government no longer possesses the property at issue, no relief is available under Rule 41(g)”). Although an exception to the law-of-the-case doctrine allows a court to revisit a prior ruling when “there is ‘(1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice,’” *Ent. Prods., Inc. v. Shelby County*, 721 F.3d 729, 742 (6th Cir. 2013) (quoting *Louisville/Jefferson Cnty. Metro Gov’t v. Hotels.com, L.P.*, 590 F.3d 381, 389 (6th Cir. 2009)), none of those circumstances is applicable in this case. By Augustin’s own admission, he came into possession of the “new evidence” on February 23, 2019—nearly two months *before* the district court issued its order denying his Rule 41(g) motion. Moreover, Augustin fails to explain how he came to possess this “new evidence” or why he could not have discovered and presented this evidence—all of which date from December 2009—much earlier. In short, the district court acted well within its discretion by declining to revisit Augustin’s arguments.

So too with Augustin’s request to amend his motion to raise a *Bivens* claim. This court already rejected the same request in Augustin’s earlier appeal of the denial of his Rule 41(g) motion. *See Augustin*, No. 19-5567, slip op. at 6. Here, as there, amendment would be futile because the claim Augustin seeks to raise is barred by Tennessee’s one-year statute of limitations for *Bivens* claims. *See* Tenn. Code Ann. § 28-3-104(a)(1)(B); *Zappone v. United States*, 870 F.3d 551, 559 (6th Cir. 2017) (noting that *Bivens* claims are subject to the statute of limitations from the state in which the claim arose); *Augustin*, No. 19-5567, slip op. at 5 (“Augustin’s *Bivens* claims would have accrued no later than April 15, 2011, when Tennessee’s Department of Safety ordered that the seized BMW be forfeited to the Bradley County Sheriff’s Department.”).

Finally, Augustin moves this court for appointment of counsel. “Appointment of counsel in a civil case is not a constitutional right” but “a privilege that is justified only by exceptional circumstances.” *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993) (citations omitted) (quoting *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985)). Augustin has ably represented

Federal Rule of Criminal Procedure 41(g) is a vehicle through which a defendant can seek to reopen his criminal case or bring civil claims against the Government.”

On appeal, Augustin reiterates the arguments contained in his Rule 60(b) motion. He also argues that, to the extent that Rule 60(b) is not the appropriate vehicle for obtaining his requested relief, the district court should have allowed him to amend his motion in order to assert a claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

We review a district court’s denial of a Rule 60(b) motion for an abuse of discretion. *Thompson v. Bell*, 580 F.3d 423, 442 (6th Cir. 2009). “Abuse of discretion is defined as a definite and firm conviction that the trial court committed a clear error of judgment.” *Id.* (quoting *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006)). Rule 60(b) permits a district court to grant relief from judgment for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

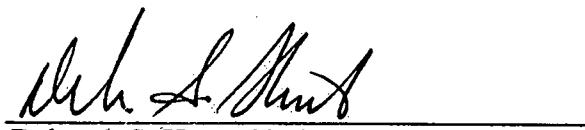
Fed. R. Civ. P. 60(b). “Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof.” *Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 385 (6th Cir. 2001).

The district court did not abuse its discretion by denying Augustin’s Rule 60(b) motion. Assuming for the sake of argument that Rule 60(b), a civil rule, may be used to challenge the denial of a Rule 41(g) motion, Augustin’s arguments are barred by the law-of-the-case doctrine. That doctrine “precludes reconsideration of issues decided at an earlier stage of the case.” *Yeschick v. Mineta*, 675 F.3d 622, 633 (6th Cir. 2012) (quoting *Caldwell v. City of Louisville*, 200 F. App’x 430, 433 (6th Cir. 2006)). In his appeal from the district court’s denial of his Rule 41(g) motion, Augustin attempted to offer the same “new evidence” that he cited in his Rule 60(b) motion—namely, the four exhibits that allegedly show that Agent Jackson had control over his property once it was seized. *Augustin*, No. 19-5567, slip op. at 5. But we explicitly determined that that

himself in this appeal and has not established exceptional circumstances warranting the appointment of counsel.

Accordingly, we **DENY** Augustin's motion for appointment of counsel and **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)
) Case Nos. 1:09-cr-187
v.)
) Judge Travis R. McDonough
ABRAHAM A. AUGUSTIN)
) Magistrate Judge Susan K. Lee
)

ORDER

Before the Court is Defendant Abraham A. Augustin's motion for relief pursuant to Federal Rule of Civil Procedure 60(b) (Doc. 252). For the reasons set forth below, this motion will be **DENIED**.

I. BACKGROUND

On October 20, 2010, a federal jury convicted Augustin of one count of kidnapping, in violation of 18 U.S.C. § 1201; one count of using and carrying a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A); one count of knowingly possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1); one count of using the mail with intent to commit murder for hire, in violation of 18 U.S.C. § 1958; and three counts of attempting to hire a person to kill another with the intent to prevent his or her testimony at trial, in violation of 18 U.S.C. § 1512(a)(1)(A). (See Docs. 89, 113, in Case No. 1:09-cr-187.) United States District Judge Curtis L. Collier sentenced Augustin to a total term of 500 months' imprisonment. (Doc. 113, at 3, in Case No. 1:09-cr-187.) This 500-month sentence included a 120-month sentence on Augustin's § 924(c) conviction, which Judge Collier ordered to be served consecutively to his collective 380 months on the other counts. (*Id.*) Augustin appealed his

convictions and his sentence, but the United States Court of Appeals for the Sixth Circuit affirmed. *See United States v. Dais*, 559 F. App'x 438, 450 (6th Cir. 2014).

On September 15, 2015, Augustin filed his first motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, claiming ineffective assistance of counsel (Doc. 141, in Case No. 1:09-cr-187). This Court denied that petition and declined to issue a certificate of appealability (Doc. 211, in Case No. 1:09-cr-187). The Sixth Circuit subsequently denied his application for a certificate of appealability. (Doc. 227, in Case No. 1:09-cr-187.)

On November 13, 2019, the Sixth Circuit granted Augustin authorization to file a second § 2255 petition challenging his § 924(c) conviction in light of the Supreme Court decision in *United States v. Davis*, 139 S. Ct. 2319 (2019).¹ (See Doc. 244, at 4, in Case No. 1:09-cr-187.) Although Augustin mistakenly purported to base his second § 2255 petition on the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (see Doc. 245, at 7, in Case No. 1:09-cr-187), the Government conceded and the Sixth Circuit agreed that, while *Dimaya* did not support Augustin's claims for relief, *Davis* did support his challenge to his § 924(c) conviction (Doc. 244, at 4, in Case No. 1:09-cr-187). On January 14, 2020, this Court granted Augustin's second § 2255 petition, vacated his conviction and sentence under § 924(c), and reduced his total sentence to 380 months' imprisonment. (Doc. 249, at 6.)

On June 29, 2015, Augustin filed a petition for return of property under Federal Rule of Criminal Procedure 41(g). (See Docs. 139, 143.) Specifically, he sought the return of:

1. 2003 BMW 745 LI (VIN # WBAGN63463DR13857);
2. \$847.00 United States Currency;

¹ Though Augustin sought to raise several other claims, the Sixth Circuit only authorized a second petition based on the challenge to his § 924(c) conviction. (See Doc. 244, at 3–4.)

3. \$9,850.00 United States Currency;
4. \$4,943.00 United States Currency; and
5. Contents of a U-Haul truck driven by Justin Vanorden.

(See Doc. 139, at 6, 8–9; Doc. 143, at 6, 8–9.) The Court denied Augustin’s petition, finding that the property sought was not in the possession of the United States at the time Augustin filed his petition. (Doc. 234, at 3.) On January 31, 2020, Augustin filed the instant motion for relief from the Court’s order denying his motion for return of property (Doc. 252). This motion is ripe for the Court’s review.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 60(b), a Court may, upon motion of a party, relieve that party from a judgment or order based on:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). “Relief under Rule 60(b) is circumscribed by public policy favoring finality of judgments and termination of litigation.” *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008). “Accordingly, the party seeking relief under Rule 60(b) bears the burden of establishing the grounds for such relief by clear and convincing evidence.” *Id.*

Under Federal Rule of Criminal Procedure 41(g), “[a] person aggrieved by the deprivation of property may move for the property’s return.” “For the district court to grant the motion, however, the federal government must have itself possessed the property at some point.”

United States v. Price, 841 F.3d 703, 707 (6th Cir. 2016) (citing *Okoro v. Callaghan*, 324 F.3d 488, 491–92 (7th Cir. 2003)). When state or local officers seized and disposed of the property, the federal government did not possess it. *Id.*; see also *United States v. Oguaju*, 107 F. App'x 541, 543 (6th Cir. 2004). The burden is on the movant to show that the property was possessed by the United States. See *Oguaju*, 107 F. App'x at 543; *United States v. Obi*, 100 F. App'x 498, 499 (6th Cir. 2004).

III. ANALYSIS

Augustin asks the Court to reverse its April 19, 2019 order dismissing Augustin's motion for return of property (Doc. 234). (See Doc. 252, at 1.) Augustin represents that he obtained new evidence from the Bradley County Sheriff's Office showing that the Government did exercise control and custody over his belongings on the date that the property was seized. (Doc. 252, at 1.) Specifically, Augustin argues that the federal government effectively controlled his property when FBI Special Agent Wayne Jackson ordered that it be seized and stored by the Bradley County Sheriff's Office. (See *id.* at 1–2, 9.) Augustin relies on the reasoning of *United States v. Fabela-Garcia*, 753 F. Supp. 326 (D. Utah 1989), as discussed in *United States v. Lee*, 62 F.3d 1418 (6th Cir. 1995) (unpublished table decision). He also cites multiple documents from the Bradley County Sheriff's Department indicating that the property at issue was to be held for Special Agent Jackson, that the impounded U-Haul seized from Augustin would be returned upon Jackson's approval, and that Bradley County was not to release any of the property without first calling Jackson. (Doc. 252-1, at 8, 12, 14, 16.)

The Government opposes Augustin's motion, arguing that the federal government never possessed Augustin's property and that the property he seeks is not in federal custody. (Doc. 268, at 1.)

Augustin does not argue that the federal government actually possessed the property he seeks; rather, he suggests that the Government constructively possessed the property. (Doc. 252, at 1, 7.) However, the Court need not determine whether the Government constructively possessed the property at issue because Augustin does not challenge the Government's assertion that it no longer possesses the property. (*See generally* Doc. 252.) “[I]f the Government no longer possesses the property at issue, no relief is available under Rule 41(g).” *United States v. Stevens*, 500 F.3d 625, 628 (7th Cir. 2007) (citing *Okoro v. Callaghan*, 324 F.3d 488, 491 (7th Cir. 2003)); (*see also* Doc. 248, at 5 (order of the Court of Appeals quoting this language).)

Further, Augustin is not entitled to any of the relief he seeks. Rather than seeking the return of the actual property, which he acknowledges is not in the Government's possession, Augustin asks that his case be reopened, the Court find that the Government committed fraud, the Court find the Government liable for the property, and the Court allow him to seek damages to compensate him for his loss. (Doc. 252, at 12.) Neither Federal Rule of Civil Procedure 60(b) nor Federal Rule of Criminal Procedure 41(g) is a vehicle through which a defendant can seek to reopen his criminal case or bring civil claims against the Government. Accordingly, the Court will not grant Augustin any such relief. Additionally, the Court may not order the Government to pay compensatory damages for seized property that is no longer in the Government's possession under Rule 41(g). *See United States v. Droganes*, 728 F.3d 580, 589 (6th Cir. 2013) (agreeing with other circuits “that sovereign immunity bars an award of money damages against the government on a Rule 41(g) motion where the property cannot be returned”). Thus, Augustin is not entitled to any of the relief he seeks.

IV. CONCLUSION

For the reasons stated herein, Augustin's motion for relief from the Court's order denying

his motion for return of property (Doc. 252) is **DENIED**. Any further attempts to secure the return of the relevant property should be directed to the State of Tennessee and the Bradley County Sheriff's Department rather than the federal government.

SO ORDERED.

/s/Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

APPENDIX C

AGENCIES:

() United States Parole Commission
() Federal Bureau of Investigation
() Immigration & Naturalization Service
() Internal Revenue Service
() United States Attorney
() Treasury Department
() Bureau of Prisons
() State Agency
() Other: Bradley Co. Sheriff's Dept

DIRECT RESPONSE TO:

Name: Abraham A. Augustin

Reg. No.: 42542-074

Unit: F2

Date: 12/30/2011

IDENTIFICATION OF REQUESTER:

NAME: Abraham A. Augustin

ALIAS: Abraham A. Augustin

DATE OF BIRTH: 01/17/1984

PLACE OF BIRTH: Haiti

F.B.I. NO:

SOC. SEC. NO.: 141 029697

OTHER:

Right Thumb

Right Index

RT	RI

RE: FREEDOM OF INFORMATION ACT
(U.S.C. 552) PRIVACY ACT
(5 U.S.C. 552a (d) (1)) Request:
EXEMPTIONS (5 U.S.C. 552 A
(J) (2)) OR SPECIFIC (U.S.C.
552a (k) (2)) NOT APPLICABLE TO
THIS REQUEST.

Dear Sir/Ms:

This letter will serve as my request pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 52a (d) (1), and the applicable State Statutes governing Freedom of Information Requests if state agency request, for full disclosure and release of all records and / or data contained in the files of your agency, and specifically under my name and / or an identifier assigned to my name. This request is sought specifically for amendment, deletion and / or expungement (5 U.S.C. 552a (d) (2) (a)) of records maintained by your Agency. The records sought but not limited to, is the compiled file containing (1) arrest records, (2) investigation and / or investigatory reports, (3) reports or evidentiary and / or scientific information findings, (4) wants, warrants, and / or detainees, (5) final and closing investigation reports; and (6) any and / or all information, data or reports not otherwise exempt by statute (5 U.S.C. (66) (1974). *Menard v Saxbe*, 498 F 2d. 1017, 162 U.S. App. D.C. 284 (1974). *Sullivan v Murphy*, 278 F. 2d, 938, 156 U.S. App. D.C. 28 (1973). Your Agency is advised that the investigation reports in toto are no longer accorded exempt status unless under the specific exemption noted., and only with reference to

specific citation of authority, *Paton v La Prade*, 524 F. 2d 862, 868-69. (CA3 1975).
Specific requests:

1. I need everything on "Abraham Asley Augustin" criminal history, charges, affidavits, warrants, arrests, incident Reports and dispositions.
2. Everything related to the Dec. 3, 2009 - kid napping and Robbery
3. On December 9, 2009 A U-Haul truck was seized by Bradley Co. officers. The truck was rented in Lorrence Dais' name and all my property was inside. U-Haul Truck Vin (Rental) - 1G DG SC 1G36F902141 I want to know who released the truck and who it was released to.
4. I also want the copy of property release form with the proper signature of the release - the person who signed it away and the person who signed to receive it. This is concerning the truck. Lorrence Dais is my codefendant and we face appeal together.
5. I need the restraining order filed by Janet Bellamy in December 2009

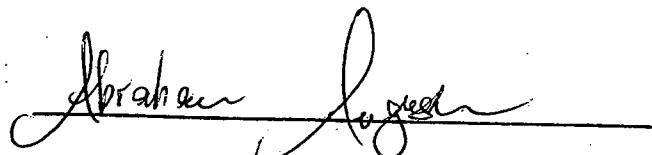
It is further requested that your agency in response to the material requested specifically inform me if and to whom the file and / or any material therein contained has been released to any identifiable individual or agency, their name, title, purpose and need for such information, the date of such release, the specific reference to authority, statute or regulation, governing such release (5 U.S.C. 52a (d) (1)), Paton v La Parde, 524 F. 2d 862 (CA3 1975), Tarlton v Saxbe, 507 F. 2d. 1116, 165 U.S. App. D.C. 293 1974), of Linda R.S. v Richard D., 410 U.S. 614, 93 S.Ct. 1146, 35 L. Ed. 2d. 536. (1973)

If is further requested that your agency provide me with a copy of specific regulations of your Department as provided by statute (5 U.S.C 552), so that compliance with such regulations is adhered to except as otherwise provided by law (5 U.S.C. 701 et. seq.).

This request is made under the Freedom of information Act (5 U.S.C., 552) and the Privacy Act (5 U.S.C. 552a) together with the "alternate means of access to record on file with your Agency. If and for any reason it is determined that portions of the material and records sought is exempt by state (5 U.S.C. (6) (c) (b) (7), 522a (j) (2) (k) (2) or by regulation (Menard v Mitchell, 430 F. 2d. 486, 139 U.S. App. D.C. 113 (1970), Nemetz v Department of Treasury, 446 F. Supp 102) I request specific citation to authority for such deletion. If it should be determined that any material be deemed CONFIDENTIAL due to the material for release. Paton v La Parde, 524 F. 2d. 862 (CA3 1975), Chastain v Kelly, 510 F. 2d. 1232. I further agree go pay any resonable costs , or file IN FORMA Pauperis if I am indigent, provided by statute or regulation of your agency, for search and copying of the material requested.

Pursuant to Title 5 U.S.C. 552 (6) (1), it is noted that your Agency has ten (10) working days following receipt of this request to provide the information and material sought. Should any delay occur, it is requested that your Agency inform me of this delay as provided by Agency regualtions and the date as to when your Agency will be able to act upon request.

Yours truly,



Dated : December 30, 2011

VERIFICATION

)

)

)

ABraham Augustin, First being duly sworn, deposes and says: That he is the affiant herein, that he has read the forgoing request for information release submitted to Bradley Co. Sheriff's Dept and knows the contents thereof. That the personal identification data submitted for this request is true and accurate upon the personal knowledge of the affiant. And the verifiable fingerprint identification submitted.

Abraham Augustin

Requester

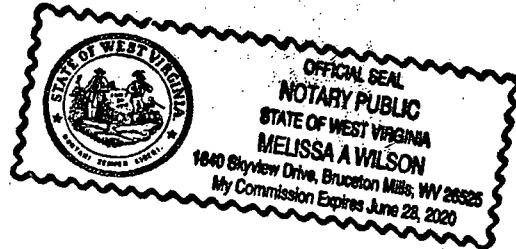
SUBSCRIBED and SWORN to
before me this 30th day of

December, 2005. 2011

Melissa Wilson

Notary

My Commission Expires: 1/28/2020



To Whom it may Concern - Cleveland, Bradley Co., TN

Mark Gibson also known as Mark Anthony Gibson Sr. testified against me in my proceeding. His testimony at my suppression hearing I am challenging. In doing so I need his criminal record, He is relevant to my case to prove his credibility. Mark A. Gibson resides in Bradley County.

Thank you

Brooke
Fayen

This is in regard to Federal case number - 1:09-CR-187 in the Eastern District of Tennessee, District court in Chattanooga, TN. I am on direct Appeal in the Court of Appeals for the Sixth Circuit.

Blade & Coat Sharpening

Illinoian

200 BURLIE AVE

CHICAGO, ILLINOIS

BLADE & COAT SHARPENING
ILLINOIS
FEB 20, 1969
EDITION 2000

BLADE & COAT SHARPENING
#42542-D74

U.S.P. - NEW YORK
P.D. BOSTON
P.D. BOSTON
P.D. BOSTON

BLADE & COAT SHARPENING

APPENDIX D

General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 11-5357 USA v. Abraham Augustin Appeal From: Eastern District of Tennessee of Chattanooga Fee Status: In Forma Pauperis	Docketed: 03/28/2011 Termed: 03/14/2014			
Case Type Information: 1) Criminal 2) Sen & Cnv Appeal 3) null				
Originating Court Information: District: 0649-1 : 1:09-CR-187-1 Court Reporter: Shannan Andrews Court Reporter: Jeannie Boleman Court Reporter: Elizabeth Coffey Trial Judge: Curtis L. Collier, Chief District Judge Date Filed: 12/22/2009 Date Order/Judgment: 03/17/2011				
Date NOA Filed: 03/22/2011				
Prior Cases: None				
Current Cases:				
	Lead	Member	Start	End
Consolidated	11-5356	11-5357	11/07/2013	

UNITED STATES OF AMERICA Plaintiff - Appellee	Christopher D. Poole Direct: 423-752-5140 [COR LD NTC Government] Office of the U.S. Attorney Firm: 423-752-5140 1110 Market Street Suite 301 Chattanooga, TN 37402
v.	
ABRAHAM A. AUGUSTIN (Federal Prisoner: #42542-074) Defendant - Appellant	Robert L. Sirianni, Jr. Direct: 407-388-1900 [COR LD NTC Retained] Law Offices 400 N. New York Avenue Suite 215 Winter Park, FL 32789
Abraham A. Augustin [NTC Pro Se] U.S.P. Coleman I P.O. Box 1033 Coleman, FL 33521	
Mark K. McCulloch Direct: 407-388-1900 [COR NTC Retained] Law Offices 201 N. New York Avenue Suite 200 Winter Park, FL 32789	

03/28/2011	<input type="checkbox"/> <u>1</u> 3 pg, 13.69 KB	Criminal Case Docketed. Notice filed by Appellant Abraham A. Augustin. Transcript needed: y. (JB)
04/15/2011	<input type="checkbox"/> <u>2</u>	The case manager for this case is: Julie Brock (JB)
04/18/2011	<input type="checkbox"/> <u>3</u> 4 pg, 490.53 KB	MOTION filed by Mr. Lloyd Alan Levitt for Abraham A. Augustin to extend time. Certificate of Service: 04/18/2011. (LAL)
04/28/2011	<input type="checkbox"/> <u>8</u> 	Pre-sentence report filed. (KAL)
04/29/2011	<input type="checkbox"/> <u>9</u> 	FILED: Motion to be Appointed Counsel by Mr. Lloyd Alan Levitt for Abraham A. Augustin. Certificate of Service: 04/29/2011.**ERROR: MOTION FILED INCORRECTLY. COUNSEL IS DIRECTED TO CONTACT THE CLERK'S OFFICE FOR DIRECTIONS REGARDING REFILE THIS DOCUMENT**-[Edited 04/29/2011 by JB] (LAL)
04/29/2011	<input type="checkbox"/> <u>10</u> 2 pg, 132.08 KB	MOTION filed by Mr. Lloyd Alan Levitt for Abraham A. Augustin to appoint counsel for Abraham Augustin. Certificate of Service: 04/29/2011. (LAL)
05/02/2011	<input type="checkbox"/> <u>11</u> 1 pg, 13.6 KB	Copy of District Court Order filed granting in forma pauperis. (JB)
05/02/2011	<input type="checkbox"/> <u>12</u> 2 pg, 29.73 KB	ORDER filed granting motion to appoint counsel [10] and appointing Mr. Lloyd Alan Levitt for Abraham A. Augustin under the Criminal Justice Act. Mr. Levitt is directed to file the Appearance of Counsel and Transcript Order Forms with this court via electronic filing no later than 5/16/11. (JB)
05/03/2011	<input type="checkbox"/> <u>15</u> 1 pg, 293 KB	APPEARANCE filed for Appellant Abraham A. Augustin by Lloyd A. Levitt. Certificate of Service: 05/03/2011. (LAL)
05/13/2011	<input type="checkbox"/> <u>18</u> 1 pg, 385.28 KB	TRANSCRIPT ORDER FORM filed by Mr. Lloyd Alan Levitt for Abraham A. Augustin; Transcript on file in district court. Certificate of Service: 05/13/2011. (LAL)
05/13/2011	<input type="checkbox"/> <u>19</u> 2 pg, 954.62 KB	TRANSCRIPT ORDER FORM filed by Mr. Lloyd Alan Levitt for Abraham A. Augustin; transcript ordered on 05/13/2011 from Court Reporter Ms. Elizabeth Coffey. [19] Certificate of Service: 05/13/2011. (LAL)
05/16/2011	<input type="checkbox"/> <u>20</u> 1 pg, 38.35 KB	APPEARANCE filed for Appellee USA by Christopher D. Poole. Certificate of Service: 05/11/2011. (CDP)
09/07/2011	<input type="checkbox"/> <u>25</u> 1 pg, 918.26 KB	LETTER SENT by to Court Reporter Ms. Elizabeth Coffey, regarding transcript related matter: [19]. Response due by 09/19/2011. (MRS)
09/19/2011	<input type="checkbox"/> <u>27</u> 3 pg, 104.48 KB	Appellant MOTION filed by Abraham Augustin asking the court to direct attorney Levitt to forward files and transcripts as previously requested . Certificate of service: 09/27/2011. (JB)
09/28/2011	<input type="checkbox"/> <u>28</u> 1 pg, 10 KB	Miscellaneous letter sent to Augustin in response to his letter of 9/19/11. (JB)
10/07/2011	<input type="checkbox"/> <u>29</u> 2 pg, 55.24 KB	Appellant MOTION filed by Defendant Abraham Augustin for Lloyd A. Levitt to be removed as counsel for Abraham Augustin and new counsel appointed. Certificate of service: 10/13/2011. (JB)
11/21/2011	<input type="checkbox"/> <u>31</u> 1 pg, 918.36 KB	LETTER SENT by to Court Reporter Ms. Elizabeth Coffey, regarding transcript related matter: [19]. Response due by 12/01/2011. (MRS)
11/22/2011	<input type="checkbox"/> <u>33</u> 2 pg, 24.71 KB	ORDER filed denying motion for new counsel [29] filed by defendant Abraham Augustin. (JB)
11/28/2011	<input type="checkbox"/> <u>38</u> 2 pg, 66.64 KB	CORRESPONDENCE: letter regarding counsel by Abraham A. Augustin. (see order of 1/5/12) (JB)
01/03/2012	<input type="checkbox"/> <u>35</u> 2 pg, 126.11 KB	MOTION filed by Mr. Lloyd Alan Levitt for Abraham A. Augustin for Lloyd Alan Levitt to withdraw as counsel for Abraham Augustin. Certificate of Service: 01/03/2012. (LAL)
01/05/2012	<input type="checkbox"/> <u>36</u> 2 pg, 24.96 KB	ORDER filed granting motion to withdraw as counsel [35] filed by Mr. Lloyd Alan Levitt. New counsel will be appointed for appellant under the Criminal Justice Act. (JB)
01/09/2012	<input type="checkbox"/> <u>39</u>	TRANSCRIPT ORDER completed by Court Reporter Ms. Elizabeth Coffey for Document [19] transcript filed by Mr. Lloyd Alan Levitt and Ms. Elizabeth Coffey in 11-5357. Date Hearing Held: 10/18/10,10/19/10, 10/20/10 and 3/10/10. Per notice from the DC. (MRS)
01/17/2012	<input type="checkbox"/> <u>41</u> 4 pg, 137.6 KB	CORRESPONDENCE: Letter requesting that the Federal Courts help him get the answers to what happened to all of his confiscated property; and questions regarding his state charges by Abraham A. Augustin. (JB)
03/30/2012	<input type="checkbox"/> <u>45</u> 2 pg, 45.96 KB	CORRESPONDENCE: Letter requesting status of appt of counsel by Abraham A. Augustin. (JB)
04/11/2012	<input type="checkbox"/> <u>46</u> 1 pg, 9.95 KB	Miscellaneous letter sent to Augustin in response to his letter of 3/30/12. (JB)
04/12/2012		

APPENDIX E



OFFICE OF THE BRADLEY COUNTY ATTORNEY

Post Office Box 1167
Cleveland, TN 37364-1167
PHONE: (423) 728-7160 Fax: (423) 476-0696

February 20, 2019

RECORDS REQUEST RESPONSE LETTER

Abraham Ashley Augustin
Reg. No. 42542-074
Federal Correctional Complex – USP 1
P.O. Box 1033
Coleman, Florida 33521

Re: Open Records Response

Dear Mr. Augustin:

This letter is being provided in response to your public records request received by the Bradley County Sheriff's Office wherein you requested copies of seven (7) different categories of information. A copy of your request is enclosed with this response letter.

Pursuant to the Open Records Act, Bradley County must respond to records requests using the form developed by the Office of Open Records Counsel.

Tennessee Code Annotated § 10-7-503(a) provides the following:

(2)(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian staff shall within seven (7) business days:

- (i) Make such information available to the requestor;
- (ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- (iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce such record or information.

In accordance with the above-cited law, this letter is being sent to provide you with a completed records request response. Enclosed herein is a total of one hundred eighty four (184) pages responsive to your request. Please be advised that some information that you requested may be held by other agencies, including the FBI, DTF and Hamilton County.

Sincerely,

Crystal Freiberg
CRYSTAL R. FREIBERG
Bradley County Attorney

APPENDIX F

Bradley County Sheriff's Office
PROPERTY INVENTORY RECEIPT

EXHIBIT 1A

PROPERTY #

09-1165

Case # 09-83814

Date/Time 12-9-09

Receipt Issued

Domestic Violence

Felony

MSD

Officer/Deputy Sgt Wayne Jackson / Cor. Maskeen Badge #

<input checked="" type="checkbox"/> Suspect	<input type="checkbox"/> Victim	<input type="checkbox"/> Owner	<input type="checkbox"/> Suspect	<input type="checkbox"/> Victim	<input type="checkbox"/> Owner	NCIC CHECK		
Name <u>Lorraine Davis</u>			Name _____			NCIC-Positive	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Address <u>BLD 1a, 1</u>			Address _____			If yes, NCIC printout must be attached		
City <u>Cleveland</u>			City _____			Computer Down	<input type="checkbox"/> Yes	<input type="checkbox"/> No
State <u>IN</u> Zip _____			State _____ Zip _____			Owner Notified	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Phone _____			Phone _____			OK to Dispose	<input type="checkbox"/> Yes	<input type="checkbox"/> No
DOB _____			DOB _____			OK to Release	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Sex <u>M</u> Race <u>B</u>			Sex _____ Race _____			If no, indicate release date:		
SS # _____			SS # _____			<i>Authorizing Officer's Signature</i>		
<i>Date</i>								
Location Recovered _____								

Location Recovered

Detailed Description of Property (Make, Model, Serial#, Type, Color) **Evidence** **Found** **Safekeeping** **Seizure**

~~RECEIVED BY~~

REASON

DATE & TIME RECEIVED

12/14/09

FINAL DISPOSITION OF PROPERTY BY ITEM # (Property Tech Only)

APPENDIX G



Bradley County Sheriff's Office

EVIDENCE RECEIPT

EVIDENCE NUMBER

09-01165

AGENCY CAD: 09-083816

CASE OFFICER Smith, J

TYPE OF OFFENSE:

CASE NAMES	TYPE	RACE	SEX	DOB	AGE	STATUS
Abraham Augustin	S	B	M			
Justine Vanorden	S	W	F			
Lawrence Dais	S	B	M			

DESCRIPTION OF EVIDENCE:

SERVICE REQUESTED:

1 One plastic evidence bag identified to contain drug evidence described as : black lighter, chapstick, gum, 5 condoms, assorted papers, Motorola cellphone, Nokia cellphone, pack of Newports (Dept. Item #001) Property

2 One plastic evidence bag identified to contain drug evidence described as : \$9850.00 cash (Augustin) (Dept. Item #002) Property

3 One plastic evidence bag identified to contain drug evidence described as : \$7829.00 cash (Dais) (Dept. Item #003) Property

4 One plastic evidence bag identified to contain drug evidence described as : \$840.00 cash (Vanorden) (Dept. Item #004) Property

5 One plastic evidence bag identified to contain plant material described as : plant material (Dept. Item #005) TBI For Testing (Must have Lab Request)

6 One plastic evidence bag identified to contain drug evidence described as : Samsung cellphone, dime, 20-dollar bill, pack Newports, lighter, wallet, jerky wrapper, pr socks (Dept. Item #006) Property

7 One Property described as : U-Haul rental truck VIN: 1GDG5C1636F902141 - HOLD for FBI SA Jackson, 423-265-3607 (furniture and household items in storage area of truck) (Dept. Item #007)

8 One manila envelope identified to contain Property described as : key to item #7 (Dept. Item #008)

Submitted by:

Date Received: 12/10/09

8:42 am

Received by: Lyn Perillo

APPENDIX H

09-1165

MAKE <i>GMC</i>	MODEL <i>C1500/1</i>	EXHIBIT
COLOR	V.I.N. <i>1G0G5C1G36F9621Y1</i>	
LICENSE # (LIC)	TYPE	STATE
WHERE FOUND <i>Athens, TN</i>		DATE <i>12-9-08</i>
COMPLAINANT <i>S/A Wayne Jackson</i>		
ADDRESS <i>FBI Chat</i>	PHONE <i>265-3401</i>	MODEL
DAMAGE OR MISSING PARTS		
MILEAGE	KEYS IN CAR <i>Yes</i>	SWITCH <input checked="" type="checkbox"/> LOCKED <input type="checkbox"/> UNLOCKED
TRUNK LOCKED	DOORS LOCKED	RADIO IN CAR
SPARE TIRE	SPARE WHEEL	JACK
CAR DRIVEN IN	BY WHOM	
WRECKER SERVICE <i>N/A</i>	WHERE STORED <i>BLSD Impound</i>	
OTHER PROPERTY IN VEHICLE:		
REMARKS: <i>Hold for FBI to search</i>		
OWNER OR OPERATOR <i>Carrie Davis</i>	HOME ADDRESS <i>Brenton Co. Jail</i>	YEAR
OFFICER <i>1008</i>	BADGE <i>1008</i>	MONTH
THE UNDERSIGNED ACCEPTS RESPONSIBILITY FOR THE ABOVE DESCRIBED VEHICLE & ITS CONTENTS.		
SIGNATURE OF TOWMAN TDS-BLER 11 (7/76) SF-0582		
VEHICLE TOW SLIP RECORD COPY		

EXHIBIT 4A

APPENDIX I

EXHIBIT 3A**IMPOUND LOT ID #****319**STATUS CURRENT
OPENVEH ID: **2141**

FINAL DISP:

RECALL

EVID #:

 PHOTO KEYS NO KEYS SEIZURE FILE FILESUSPECT LAST: **DAIS** SUSPECT FIRST: **LAWRENCE** SUSPECT LAST #2: **AUGUSTIN** SUSPECT FIRST #2: **ABRAHAM**SEIZURE DATE: **12/10/2009** CASE #: **09-083816**

DETECTIVE

SMITH

<input checked="" type="checkbox"/> DEU	<input type="checkbox"/> TRAILER	<input type="checkbox"/> Drug Seizure
<input type="checkbox"/> CIU	<input type="checkbox"/> IMPOUND LOT	<input type="checkbox"/> Altered-missing #'s
<input type="checkbox"/> SO	<input type="checkbox"/> DRUG BUILDING	<input type="checkbox"/> Stolen
<input type="checkbox"/> SURPLUS	<input type="checkbox"/> EVIDENCE	<input type="checkbox"/> Other

 FOUND PROPERTY TOWING COMPANY Explain: LIEN NAME: **U-HAUL**

YEAR	MAKE	MODEL	VIN	COLOR	TAG	STATE
	U-HAUL		1G065C1G36F902141			

PROPERTY: **U-HAUL TRAILER WILL BE RETURNED UPON APPROVAL OF W. JACKSON, FBI, 423-265-3601**

NAME LAST:

NAME FIRST:

DISP:

CLEAR DATE:

RELEASED TO:

DATE/TIME:

NOTES:

APPENDIX J

09-1165

BRADLEY COUNTY SHERIFF'S OFFICE
IMPOUND LOT ACCESS/EGRESS FORM

CASE # 09-83816 DATE: 12/9/09 TIME: _____ PHOTO? Y N
OFFICER/DETECTIVE: SIA Jackson FBI APPROVED BY: Dot Marshall

VEHICLE INFORMATION

COLOR: _____ YEAR: 06 MAKE: Gmc MODEL: _____ TAG# _____
STATE: _____ VIN# 1G065C1G36F902141 MILEAGE: _____
IMPOUNDED FROM: Athens, TN WRECKER: N/A

REASON IMPOUNDED:

DRUG SEIZURE: _____ OTHER CRIME RELATED SEIZURE: _____
STOLEN VEHICLE(INVESTIGATION): _____ ALTERED OR MISSING NUMBERS: _____
OTHER: to be searched by FBI - Do not release w/o calling SIA Jackson

VEHICLE RELEASE:

SETTLEMENT: _____ ORDER FROM DOS: _____
ORDER SUPPLIED BY DEFENDANT: _____ OTHER: _____

DRIVER INFORMATION:

LAST: Digs FIRST: Corvane MIDDLE: _____
ADDRESS: BCSO J.A. 1 CITY: _____ STATE: _____ ZIP: _____
DOB: / / SEX: M F RACE: WHITE BLACK HISPANIC ASIAN

OWNER INFORMATION:

LAST: _____ FIRST: _____ MIDDLE: _____
ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

VEHICLE DAMAGE:

VEHICLE CONTENTS: KEYS RADIO SPARE SPARE TIRE JACK CB RADIO
OTHER furniture & household items in storage area of truck

OTHER PROPERTY FORWARDED TAKEN AND SETTLED:

09-01165,
DESCRIPTION: Bradley County Sheriff's Office
Controlled Substances
SERIAL #: _____
WHERE FOUND: Dais, Lawrence (S)
WHERE STORED: _____

Bradley County Sheriff's Office



09-01165 #7

Bradley County Sheriff's Office - 09-083816

*NOTE: THIS FORM
FORWARDED THE

OBTAINED &
FOUND LOT!