

TULARE COUNTY SUPERIOR COURT DISTRICT
, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

AUDEN GUTIERREZ

Defendant(s).

DA No. 15-008695

Court No.

**FELONY COMPLAINT
DEPT: GRANT**

The undersigned is informed and believes that:

COUNT 1

On or about January 30, 2014, in the County of Tulare, the crime of **INSURANCE FRAUD**, in violation of **INSURANCE CODE 1871.4(a)(1)**, a Felony, was committed by **AUDEN GUTIERREZ**, who did unlawfully and knowingly present and cause to be presented a false and fraudulent material statement and material representation for the purpose of obtaining and denying compensation, as defined in section 3207 of the Labor Code.

COUNT 2

On or about January 30, 2014, in the County of Tulare, the crime of **INSURANCE FRAUD**, in violation of **INSURANCE CODE 1871.4(a)(2)**, a Felony, was committed by **AUDEN GUTIERREZ**, who did unlawfully and knowingly present and cause to be presented a false and fraudulent written and oral material statement in support of, and in opposition to, a claim for compensation, as defined in section 3207 of the Labor Code.

COUNT 3

On or about January 30, 2014, in the County of Tulare, the crime of **INSURANCE FRAUD**, in violation of **PENAL CODE SECTION 550(A) (1)**, a Felony, was committed by **AUDEN GUTIERREZ**, who did aid, abet, solicit, conspire with another and did knowingly present and cause to be presented a false and fraudulent claim for the payment of a loss and injury, including payment of a loss under a contract of insurance.

WARRANT

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

Pursuant to People v. Cunningham, the People hereby put the defendant on notice that the aggravated sentence may be sought in this case.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT CONSISTS OF 3 COUNT(S).

Executed at VISALIA DIVISION, California, on June 3, 2015.

CRAIG GARDNER
DEPUTY DISTRICT ATTORNEY

Agency: TCDA

<u>DEFENDANT NAME</u>	<u>SEX</u>	<u>RACE</u>	<u>HGT</u>	<u>WGT</u>	<u>EYES</u>	<u>HAIR</u>	<u>COURT DATE</u>	<u>INTAKE STATUS</u>
AUDEN GUTIERREZ	M	H	508	165	BRO	BRO		WA

COMPLAINT PROCESSED BY: JLD

TULARE COUNTY DISTRICT ATTORNEY'S OFFICE
Bureau of Investigations
Case Report



DEFENDANT/SUBJECT: GUTIERREZ, AUDEN		DATE: 9/29/14
OFFENSE: I.C. 1871.4(a)(1)	VICTIM: SAFETY NATIONAL CASUALTY CORPORATION	
CASE NO.: 14-01-000487 DA NO: [DA #]	SUBMITTED BY: ALONSO GUTIERREZ <i>Alonso Gutierrez</i>	
APPROVED BY: LINDY GLIGORIJEVIC <i>Lindy Gligorijevic</i>	DATE: <i>10/6/14</i>	

Suspect(s)

Auden Gutierrez

Persons contacted

Special Investigator, Josh Augustin

Attorney, Jeff Greenup

Investigator, Jill McCurry Kern County District Attorney's Office

Investigation

Wednesday
08/27/14

I was assigned the Suspected Fraudulent Claim (SFC) Referral Form (DF-1) submitted by SIU Analyst from G4S Compliance & Investigations.

Thursday
09/25/14
1354 hrs

I reviewed the FD-1. The FD-1 synopsis indicated the claimant alleged he slipped and fell and sustained an injury to his lower back while working at the Vallarte Supermarket in Tulare.

Friday
09/26/14
1440 hrs

Statement from Josh Augustin

I contacted Special Investigator, **Josh Augustin** via telephone. Josh stated he really didn't have much information regarding this investigation, as it was just handed to him just days ago. Josh stated he will forward my information to Attorney, **Jeff Greenup**. He sated he will have more information regarding this investigation.

1550 hrs

Statement from Jeff Greenup

I received a telephone call from Attorney, **Jeff Greenup**. Jeff stated the alleged injury and the first deposition took place in Kern County, Bakersfield California. I informed Jeff based on the location of the alleged injury this investigation would fall in the Kern County jurisdiction, not Tulare County.

1557 hrs

Statement from Jill McCurdy

I contacted Kern County District Attorney Investigator, **Jill McCurdy** via telephone. Jill stated they recently received the demand letter regarding this investigation and that this investigation will most likely be assigned to Investigator, **Dave Marshal**.

Evidence

None

Conclusion

The alleged injury occurred in the Kern County jurisdiction. Therefore this case is closed.

TULARE COUNTY DISTRICT ATTORNEY'S OFFICE
Bureau of Investigations
Case Report



DEFENDANT/SUBJECT: GUTIERREZ, AUDEN		DATE: 1/12/15
OFFENSE: I.C.1871.4 (a)(1)	VICTIM: SAFETY NATIONAL CASUALTY CORPORATION	
CASE NO.: 14-01-000487 DA NO: [DA #]	SUBMITTED BY: ALONSO GUTIERREZ <i>[Signature]</i>	
APPROVED BY: GIL CARDENAS <i>[Signature]</i>	DATE: 3/28/15 ↓ ↓	

Suspect(s)

Auden Gutierrez
 194 South Elm Street
 Pixley, California, 93256

Persons contacted

- W-1 Dave Wolf, Kern County Deputy District Attorney
- W-2 Tania Matulewicz, Sedgwick CMS Insurance Claims Adjuster
- W-3 Geoffrey Greenup, Sedgwick CMS Insurance Attorney
- W-4 Anabelle Zenteno, Risk Management Supervisor Vallarta Supermarkets
- W-5 Juan Sanchez, Vallarta Supermarket

Summary

Auden Gutierrez filed a worker's compensation claim stating he injured his lower back on January 30, 2014, while throwing trash into a trash compactor. At the time of the alleged fall, Auden was employed at the Vallarta Supermarket as a janitor. In his June 27, 2014, deposition, Auden stated under oath that he slipped and fell injuring his back. Auden also stated on the morning of the alleged fall, it was raining and that's why he fell. No rain was visible in the surveillance video.

However, the Vallarta store surveillance footage shows Auden looking over his left shoulder towards the forklift driver's direction. It appeared as if Auden was scanning the area to see if anyone was watching. While Auden threw the trash bag into the trash compactor, he began to lower himself to the ground while holding on to the trash compactor with his right hand. At that same moment, Auden placed his left hand on the ground to help support his weight while turning and lowering his body into a sitting position. Auden then leaned back against the metal railing to appear as if he had fallen.

After Auden's alleged injury, Supervisor Claudia attempted to make arrangements for Auden to go to the Industrial Medical Clinic. Auden stated in his deposition that Claudia was taking too long, so he left to seek medical attention on his own because he was in too much pain. However, Auden also stated in his deposition, that on the same day of the alleged injury instead of going to the medical clinic, he went to Tijuana, Mexico to visit his sick father.

On April 23, 2014, Auden underwent a fitness exam by Doctor Vaughn in Visalia, California. Auden Gutierrez has a commercial license. In order for his commercial license to remain active, he is required to have a fitness exam every two years. In his DMV questionnaire, in which he is required to disclose any medical condition, Auden stated on question #1 that he denies having any injury in the last five years. He signed this document under penalty of perjury.

Investigation

Wednesday
08/27/14

I was assigned the Suspected fraudulent Claim (SFC) Referral Form (FD-1) submitted by SIU Analyst from G4S Compliance & Investigations.

I reviewed the FD-1 synopsis. The synopsis stated the claimant, Auden Gutierrez, claimed an alleged injury which occurred on January 30, 2014, at the Vallarta Supermarket located at 1111 North Cherry Street, Tulare, California, 93274. The claimant alleged he slipped and fell and sustained an injury to his lower back while throwing trash into a trash compactor. However, Vallarta Supermarket discovered surveillance footage of the incident. The surveillance showed the claimant as he waited for a person to go by and another individual on a forklift to turn around. When no one was looking, the claimant looked both ways and then threw the bag of trash into the compactor as he threw himself on the ground. The claimant later refused to be taken to the Industrial Clinic.

During the claimant's deposition that was taken on June 27, 2014, the claimant testified he slipped and fell, struck his back on a metal pole and then landed hard on the ground on his buttocks. The claimant gave this exact testimony approximately a dozen times. The video appeared to contradict the claimant's sworn testimony.

During my initial investigation it was discovered through Kern County Investigator, Jill McCurdy that the Kern County District Attorney's Office Investigations Unit was investigating the case. Based on the information obtained from Investigator McCurdy, I closed this case on October 06, 2014.

Thursday
12/18/14
1506 hrs

I was notified by Tulare County District Attorney Investigator Aide Cristal Rodarte, that this case was being referred back to Tulare County from Kern County. Cristal stated that the Kern County District Attorney's office was referring this case back to us, because the loss occurred in Tulare County not Kern County.

Friday
01/02/15
0959 hrs

I contacted Kern County Deputy District Attorney David Wolf via telephone. I identified myself and explained to David that I would like to meet with him regarding this case. I also informed David that I would like to pick up the case file and any other documents pertaining to this case.

1100 hrs

Statement from David Wolf

I contacted Kern County Deputy District Attorney W-1 David Wolf, at his office in Bakersfield, California. David explained that the loss occurred in Tulare County, not Kern County. David also stated that on April 23, 2014, just three months after the alleged date of injury, Auden Gutierrez underwent a fitness exam by Doctor Vaughn in Visalia, California. David stated that Auden Gutierrez has a commercial driver's license. In order to remain qualified for one, he is required to undergo a fitness exam every two years to confirm he is able to safely operate a commercial vehicle. During a fitness exam he is required to complete a DMV questionnaire, in which he is required to disclose any medical conditions that could impair his ability to operate a commercial vehicle. David stated that Auden Gutierrez indicated in the DMV questionnaire that he denied having any injury in the last five years and signed the document under penalty of perjury. David also stated he did not know why the suspect's deposition was completed in Kern County and not in Tulare County.

David Wolf provided me with the case file, which contained the following;

- **A copy of the Medical Examination Report for Commercial Driver Fitness Determination**
- **Medical Summary from Marco-Pro, Inc.**
- **California Department of Insurance Suspected Fraudulent Claim (SFC) Referral Form (FD-1)**
- **Doctors First Report of Occupational Injury Or Illness**
- **June 27, 2014, Deposition of Auden Gutierrez completed in Bakersfield, California**
- **Security Video from Vallarta Supermarket**

Wednesday
01/07/15
1045 hrs

I reviewed the case file received from Kern County District Attorney David Wolf. I reviewed the Medical Examination Report for Commercial Driver Fitness Determination which was dated, April 23, 2014. The medical examination was given by Marcus E. Vaughn, DC, QME located in Visalia, California. The Health History portion of the exam indicates that the driver completes this section, but the medical examiner is encouraged to discuss with the driver. On page 1 under section 2 (Health History), question #1 asks about any illness or injury in the last five years. The answer to that question was indicated as NO. On the same page, the third question to the last under the (Health History) it asks about any chronic low back pain. The answer to that question was also indicated as NO. Also, on the bottom of page one, Auden Gutierrez's signature appears next to the indicated date. This document is signed under penalty of perjury.

I reviewed the Doctor's First Report of Occupational Injury or Illness from Tulare Regional Medical Center in Tulare, California on Auden Gutierrez. The report was completed by Kuljit Hundal M.D and was dated January 31, 2014. Number 17 of the doctor's first report asks how the accident or exposure happened. The answer to the question was translated on the June 27, 2014, deposition by the interpreter on page 59 (Line 16-19). His statement was translated as follows, "I am in a lot of pain because I hit myself against the post hitting my back and was unable to stand up by myself. I received the help of a co-worker."

The doctor indicated the following exam findings:

- The subject complains of lumbar spine pain S/P fall at work.
- Objective findings, lumbar TTP.
- X-ray and laboratory results, unremarkable.

Work restrictions:

- No heavy lifting
- No prolonged standing
- Desk work only

For additional detailed information, refer to Kuljit Hundal M.D. Doctor's First Report of Occupational Injury on Auden Gutierrez.

I also reviewed the Doctor's First Report of Occupational Injury or Illness from Valley Industrial & Family Medical Group in Visalia, California. The report was conducted by Diana Jackson, P.A. and was dated February 03, 2014. Question 17 of the doctor's first report asks how the accident or exposure happened. The patient stated the following, "I was walking to the trash I slipped and fell losing my balance, and now I have pain on my lower back."

P.A. Jackson stated the following in her report:

The subject reports he was not able to finish his shift due to pain. The patient was taking out trash when he slipped and lost his balance and fell against a metal post. Diagnoses reports from Tulare ER stated acute lumbago mechanical fall. The patient denies any radiating pain to the lower extremities, no numbness or tingling, no incontinence, and denies any prior injury to the back. The patient is requesting time off work. The diagnosis of exam is a mechanical fall with lumbar contusion.

Question #21 asks if the findings and diagnosis are consistent with patient's account of injury or onset of illness. The answer to the question was noted as yes.

P.A. Jackson placed the following restrictions on Auden:

Comment: Light work 2/3/14 through 2/10/14

Restrictions: No prolonged walking/standing
No repetitive bending/stooping
Light work

I also reviewed the follow-up appointment document from Valley Industrial & Family Medical Group, dated February 18, 2014. The follow-up appointment was also conducted by Diana Jackson, P.A. on claimant Gutierrez. P.A. Jackson returned Auden to work with no restrictions.

Comment: Regular work 2/18/14 through 2/25/14

Restrictions: Regular work

P.A. Jackson further stated in her report that the patient is in no acute distress. The patient is very dramatic and grabbing his legs as if he is in pain on both thighs with straight leg raises. His complaints of pain are not substantiated by his exam.

For additional detailed information, refer to Diana Jackson, P.A.'s follow-up medical report on Auden Gutierrez.

I reviewed the Primary Treating Physician's Medical-Legal Evaluation reports from Igen Medical, INC. Malintze Gutierrez, D.O.

Patient Name: Gutierrez Cervantes, Auden

Date of Birth: May 19, 1957

Social Security: xxx-xx-0489

Employer: Vallarta Food Enterprise, Inc.

Occupation: Janitor

Date of Injury: January 30, 2014

Date of Evaluation: March 3, 2014

The report states that Auden sustained an injury to his lower back on January 30, 2014, while performing his usual and customary duties as a janitor at Vallarta Food Enterprise, Inc.

Malintze Gutierrez, D.O. stated in his report that the Auden stated it was raining while he was taking trash out. He climbed on the trash can base and when he turned to lift up the cap of the trash can, he slipped and lost his balance and he hit his lower back on the post of the trash can causing him to fall. He was unable to stand. Someone saw him on the floor and took him back inside. He reported the injury to his supervisor, Claudia, but was not provided with medical attention. The supervisor took too long to provide him with medical attention, so he decided to seek medical attention on his own at Regional Hospital in Tulare. He was evaluated, had diagnostic tests taken, was prescribed medications, and was given work restrictions. (Page #2)

Due to the pain he was unable to return to work since the date of his injury. The patient complains of lower back pain. The pain is described as constant, stabbing/sharp and achy. The severity of pain is reported as 7-8 on a 0-10 scale, 0 being no pain and 10 being severe pain. The pain occurs approximately 100% of the day. The pain is aggravated because of physical activities. The pain is alleviated because of ibuprofen. Auden also complains of numbness, tingling and weakness of the legs and feet. The patient also complains of having headaches as well as depression, anxiety and insomnia. The patient denies having been involved in any prior automobile accidents and any prior work related accidents as well. The patient also stated he denied having sustained any prior non work related accidents. (Page #3)

The patient is unable to heel-toe walk. There is no inflammation, swelling, redness or bruising. Range of motion is limited in all planes, secondary to the pain. (Page #5)

On the bottom of page 16, Malintze Gutierrez, D.O. stated that this patient shows abnormalities in physical examination, which require immediate medical treatment. Please review appropriately as it may be determined to the patient's condition if treatment is needed.

For additional detailed information, refer to Igen Medical, Inc. Malintze Gutierrez's, D.O. report.

I also reviewed Auden Gutierrez's deposition which was conducted in Bakersfield, California on Friday, June 27, 2014. The deposition was conducted in English with a Spanish Interpreter. The following are several noteworthy statements given by Auden during his deposition.

Deposition dated June 27, 2014.

-Page 20. (Line 11-12) - (Question) What area of the store were you working in at the time you slipped and fell?

-Page 20. (Line 13-15) - (Answer) I was putting the trash in the big trash container. It was a Thursday, the 30th. It was raining.

-Page 20. (Line 21-23) - Just as I had come out of the warehouse I was lifting the lid off the trash container, and it was then where I slipped and fell.

-Page 21. (Line 3-4) - Outside where the trash is. And when I put it in, it was wet and I slipped.

-Page 21. (Line 7-8) - (Question) When you say, "it was wet," does that mean it was wet on the ground where you slipped?

-Page 21. (Line 9-10) - (Answer) Yes, there it was the part where you climb, and it was wet. And there is where I slipped and fell.

-Page 23. (Line 9-10) - (Question) And then was there a pole or a post in the area where you slipped and fell?

-Page 23. (Line 13-15) - (Answer) Yes, it was like a pole, but they are made from iron. The trash compactor has two poles. So when I lost my equilibrium I got a hold of the pole.

-Page 24. (Line 12-15) - I took the trash from the trash can, and I was taking it like this, and I lost my balance. So I turned completely hitting myself against the left pole of the container.

-Page 30. (Line 6-10) - I was standing putting the trash in the big container. I lost my balance, and I went like this because it was slippery. And that's why I lost my balance, and I hit myself against the pole of the trash container.

-Page 30. (Line 15) - Yes, I fell sitting down.

-Page 30. (18-19) - Yes, first I was hit on the pole, and then I fell in the sitting position. And it hurt a lot.

- Page 31. (Line 12) - Completely I fell down.
- Page 31. (Line 24-25) - Well, it was a big impact because after I got hit by the post I felt my lower back hurting a lot.
- Page 32. (Line 3) - First the pole hit me before falling.
- Page 32. (Line 9-11) - When I lost my balance, the post was there. That is where I received my first impact. Then I fell on my buttocks.
- Page 32. (Line 15-16) - When I lost my balance, yes. As I was falling I couldn't have hit myself being standing up.
- Page 32. (Line 23-25) and Page 33. (Line 1) (Question) Just so I understand, can you tell us again just one more time, in your own words, what happened from the moment you slipped and fell until the moment you landed on the ground, everything that happened.
- Page 33. (Line 2-5) - (Answer) Well, I took the trash from the big trash can. That day it was raining. And it was wet. I was lifting the trash bag, then it was when I lost my balance, and I went like this because I lost my balance.
- Page 33. (Line 8-11) - Turning to the left, and I was hit by the post, and I was doing this – and the post helped me while I was falling down enough that I could not stand up. And it was then when I asked for help.
- Page 34. (Line 4) - When I was swaying the post hit me.
- Page 34. (Line 20-21) - I lost my balance, the post hit me, and that is when I was on the floor.
- Page 36. (Line 14-15) - I landed on the floor and first I was hit by the post.
- Page 37. (Line 7-8) - Yes, I was sitting down, and I was unable to stand up anymore.
- Page 37. (Line 17-19) - Yes, I hit first. I was hit by the post, and then I was losing my balance, and I fell on my buttocks.
- Page 38. (Line 24) -Yes, I couldn't stand up.
- Page 42. (Line 20) - (Question) When you told Claudia about how the injury happened, were you telling her the truth? Or lying to her?
- Page 42. (Line 23) - (Answer) I was telling her the truth.
- Page 42. (Line 24-25) and Page 43. (Line 1)- (Question) And then when you reported the injury, Claudia began to make arrangements for you to go to the Industrial Medical Clinic that same day; is that right?

-Page 43. (Line 2-5) - (Answer) Well, I told her, and she told me to wait. And I was there until about 2:00 in the afternoon. And it was hurting so much I went to the emergency at the hospital, and there is where they treated me.

-Page 43. (Line 6-7) - (Question) Are you actually going to give that testimony under oath, sir?

-Page 43. (Line 8) - (Answer) Yes, yes.

-Page 43. (Line 17-19) - Yes, it was 2 o'clock, and she would not let me go to the clinic. And that is when I went to the hospital, like, about 2 o'clock.

-Page 43. (Line 23-25) and Page 44. (Line 1-2) - (Question) What happened the day you reported the injury falsely, was that when your supervisor told you, you needed to get a drug test at the industrial clinic. You didn't want to submit to a drug test, so you told her you wanted to go home; correct?

-Page 44. (Line 3-5) (Answer) I was always positive to that. And I never denied going to a drug test. I never said, "NO." After that she called me home.

-Page 44. (Line 6-7) - (Question) Your wife said you went to Tijuana to visit your sick brother, correct?

-Page 44. (Line 8) - (Answer) That is true.

-Page 44. (Line 9-11) - (Question) So you went to Tijuana to avoid taking a drug test? Did you actually go to Tijuana? Or was that another lie?

-Page 44. (Line 12-13) - (Answer) I went, my father was sick. It was an emergency.

-Page 48. (Line 20-23) - (Question) At the time of the injury, did your supervisor say to you that she was going to make arrangements for you to go to the industrial clinic at about 7:30 a.m. that day? Yes or no.

-Page 48. (Line 24) - (Answer) Yes.

-Page 52. (Line 4-5) - (Question) Did you go to Tijuana on the day you reported the injury?

-Page 52. (Line 6) - (Answer) Yes, it was an emergency.

-Page 52. (Line 7) - (Question) And you came back that night? Or the next morning?

-Page 52. (Line 9-10) - (Answer) That night, because it was hurting a lot. And the next day I went to the emergency.

-Page 53. (Line 10-12) - (Question) So you went home in excruciating pain, your wife said you have to go to Tijuana, and you went to Tijuana.

-Page 53. (Line 13) - (Answer) Yes.

-Page 54. (Line 3-6) - (Question) Then why didn't you go to the emergency room first instead of going home if you were in so much pain if you couldn't wait 30 minutes to go to the industrial clinic?

-Page 54. (Line 7-8) - (Answer) Because it was an emergency. It was my father that was sick.

After reviewing Auden's deposition it was determined that Auden made several material misrepresentations under oath during his deposition.

For additional detailed information, refer to the full Deposition transcript dated June 27, 2014.

Friday
01/09/15
0945 hrs

I viewed the Vallarta Supermarket security video I obtained from Kern County Deputy District Attorney David Wolf. The following is a summary of what I viewed in the security video.

Security Video Footage January 30, 2014

06:51:42- Auden appears on video pushing a wheeled trash can.

06:52:02- Auden opens the trash compactor and throws five trash bags into the compactor.

06:52:48- Auden leaves the trash compactor area out of camera view.

06:55:05- Auden appears a second time pushing what appears to be a trash bin.

06:55:26- Auden lifts a trash bag out of the trash bin and throws the trash bag into the trash compactor. An unidentified individual passes by Auden while another individual is seen in the background on a forklift.

06:55:32- Auden removes a second trash bag out of the trash bin and throws it in the trash compactor.

06:55:39- Auden is seen removing a third trash bag from the trash bin. Auden is holding the trash bag while his back is facing towards the forklift driver. At that moment, Auden turns his head over his left shoulder as if to look towards the forklift driver's direction. As Auden throws the trash bag into the trash compactor, he begins to lower himself to the ground while holding on to the trash compactor with his right hand. At that same moment, Auden places his left hand on the ground to help support his weight while turning and lowering his body into a sitting position. Auden then reclines his back against the metal railing and places his feet out in front of him.

06:55:44- Immediately following Auden's alleged fall, the individual driving the forklift approaches Auden and then leaves.

06:56:10- The forklift driver returns to Auden's location.

06:56:58- The forklift driver leaves again.

06:57:04- The forklift driver and an unidentified female approach Auden.

06:57:42- The forklift driver assists Auden in getting up. Auden then places his right hand on his lower back, as if to be in pain and begins to walk slowly with both the forklift driver and the unidentified female into the building.

06:59:21 - An unidentified male approaches the trash compactor and proceeds to step onto the trash compactors' floor plate ramp. The individual then slides his right foot, back and forth on the ramp, as if to see if the ramp is wet or slippery, then walks back into the building.

Website <http://www.steelwarehouse.com> describes a floor plate as being...“distinguished by a regular pattern rolled or embossed onto the surface of the steel sheet. The floor plate has raised pattern studs, distributed to give maximum slip resistance.”

Website <http://www.dictionaryofconstruction.com> also describes a floor plate as being...“a steel plate with a raised pattern on the surface that helps prevent accidents due to slipping.”

07:00:55 - The same forklift driver approaches the trash compactor area, closes the trash compactor lid and then walks somewhat around the trash compactor while looking down, as if to be looking for something.

After viewing the video footage, it was apparent that the claimant, Auden Gutierrez, did not slip and fall. In the video, it appeared as if Auden was scanning the area to make sure no one was looking before placing himself on the ground to appear as if he had fallen. At no time during the video did it appear that Auden slipped and fell hurting his back against any metal railing.

Friday
02/06/15
1315 hrs

Statement from Tania Matulewicz

Investigator Aide Cristal Rodarte and I met with Sedgwick CMS Insurance Claims Adjuster W-2 Tania Matulewicz, at her employer which is located at 1600 Ventura Blvd Encino, California.

Tania stated she is currently the Claims Adjuster for the Sedgwick CMS Insurance Company. She initiated the Auden Gutierrez investigation after viewing the Vallarta store video. Tania requested that the Special Investigations Unit prepare a suspected fraud referral form. The FD-1 was submitted to the California Department of Insurance and to the Tulare County District Attorney's office for suspected fraudulent activity. SIU did not conduct an investigation. However, Tania also stated that the deposition was taken by their Attorney in Kern County.

Tania provided us with the following documents;

- ISO Claim Search Match Report Summary of Auden Gutierrez
- Claim File Demand Package Update Report

-Workers' Compensation claim submitted by Auden Gutierrez on July 18, 2003

1412 hrs

Statement from Geoffrey Greenup

Investigator Aide Cristal Rodarte and I also met with Sedgwick Insurance Attorney W-3 **Geoffrey Greenup** at his place of employment, which is located at 15060 Ventura Blvd., Sherman Oaks, California. Mr. Greenup stated he believes this is a good case because it appears the alleged injury was staged. In the video, Auden gently sits down and then calls for help. Mr. Greenup also stated that he has video footage of Auden rehearsing just a few minutes before the alleged fall. I informed Mr. Greenup I was not aware of the video surveillance containing the claimant's possible rehearsal. Mr. Greenup provided us with a copy of the compact disc video surveillance. I made a working copy of the compact disc. The original compact disc was later booked into the Tulare County District Attorney's evidence locker.

(Exhibit #1)

Wednesday

02/18/15

1555 hrs

Statement from Anabelle Zenteno

I contacted W-4 **Anabelle Zenteno**, Risk Management Supervisor at Vallarta Supermarkets via telephone. I identified myself and nature of my contact. Anabelle stated she had additional documents she wanted to send to me via email. I asked Anabelle if an investigation was completed by their department. Anabelle stated that their internal investigator, Jack A. Bair conducted the investigation. Anabelle stated she will forward a copy of the investigation report and the other documents via email.

1616 hrs

I received the copy of the internal investigation report and the supporting documents via email from Anabelle Zenteno. The following are documents included in the email.

(Exhibit#2)

- **Injury Management Report from Valley Industrial & Family Medical Group**
- **Physician's Report of Work Status from Valley Industrial & Family Medical Group**
- **Doctor's First Report of Occupational Injury or Illness and work Release Form for Auden Gutierrez**
- **Copy of a letter stating that Auden called work to tell them he was not coming in to work because he had sustained an injury at home.**
- **Investigation Report from Investigator Jack A. Bair.**

Friday

02/20/15

1313 hrs

I received an email from Claims Adjuster W-2 Tania Matulewicz. Contained in the email were five pages which indicated the benefits and total loss spent in litigation on this case to date. The total amount of loss is \$14,582.54. The documents received on February 6, 2015, from Tania, are included in Exhibit #3 as well.
(Exhibit #3)

1520 hrs

I reviewed the workers' compensation documents I received from Tania Matulewicz. The documents indicated that Auden Gutierrez was involved in work related traffic accident on July 18, 2003, while working for Empire Transportation in Riverside, California.

The following is a summary of Steven R. Yegge, M.D.'s report regarding Auden's Neurodiagnostic Consultation, which was conducted on November 25, 2003, in Colton, California.

Current Complaints: (Page 1)

The patient complains of pain in his left side of the neck that radiates to the left arm. He stated the pain awakens him at night.

History of Injury As related by The Patient: (Page 2)

The patient states that while employed with Empire Enterprise as a parking attendant, he was driving a shuttle bus. A dog got in front of him. Auden stated he tried to avoid hitting the dog so he swerved to the side, went up the sidewalk, causing the wheel to pull his left arm and neck. He stated he felt immediate pain.

I viewed the compact disc video surveillance I obtained from Attorney Geoffrey Greenup. The following is a summary of what I viewed in the security video.

Security Video footage January 30, 2014

06:51:42- Auden appears on video pushing a wheeled trash can.

06:51:49- Auden pushes the trash can up against the trash compactor ramp. Auden then steps on the floor plate ramp between the trash compactor and the trash can. In one continuous motion, Auden turns, simulates throwing something, and then leans back up against the metal railing. While up against the railing, Auden places his left hand on his lower back and bends over slightly as if to have sustained a back injury.

06:52:02- Auden proceeds to throw the trash bags into the trash compactor.

06:52:32- Auden leaves the trash compactor area and enters the building.

After viewing the video I obtained from Attorney Geoffrey Greenup, I noticed it is the same video I received from the Kern County District Attorney's Office. However, after viewing the video, it did appear as if Auden rehearsed just a few seconds prior to the alleged injury.

Note, in the video surveillance where Auden allegedly slipped and fell, he is seen placing his hand on his lower back, just as he was seen rehearsing in the beginning of the video.

Monday
02/23/15
1208 hrs

Statement from Juan Sanchez

I contacted and conducted a digital recorded interview with W-5 Juan Sanchez at his employer, Vallarta Supermarket in Tulare, California. I identified myself and nature of my contact. The interview was conducted in Spanish due to Juan Sanchez's limited English.

Juan stated he has been employed with Vallarta Supermarkets for approximately four years. Juan stated his job duties consist of delivery driver and janitorial work, along with helping in any other departments if needed.

A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Juan Sanchez. Juan identified the individual on the photo as Auden. Juan stated Auden's duties consisted of janitorial work as well. When he was hired, Auden was already employed with Vallarta. Juan stated that on occasion he would converse with Auden. They would talk about work and some personal issues. I asked Juan if he was aware of the incident regarding Auden. Juan stated, "yes." Juan stated he asked Auden what happened several days after the incident. Auden told him that he slipped and that Auden explained and physically demonstrated to him how he fell. Auden told him that he was standing up while throwing trash. His right foot slipped and his legs spread apart causing him to fall back. Auden told him he fell against a pole and landed in a sitting position injuring his back. Juan stated Auden demonstrated how he fell while they were both at the loading dock, next to where Auden's alleged injury occurred.

I asked Juan if at any time before Auden's injury, did Auden mention anything regarding another job, financial problems, prior injuries, or an out of town trip to Tijuana, Mexico Juan stated, "no."

Juan stated he asked Auden on several occasions when he would be returning to work. Juan stated that Auden told him on several occasions that he would be returning soon, but he never showed up to work. Juan stated, "knowing how Auden is." I asked Juan what he meant by that. Juan stated the truth is, "Auden is somewhat of a liar." Juan stated in one occasion, Auden told him that he was a boxing trainer and that several of his trainees made it big and were well known boxers. Juan stated that in January, Auden told him that he would not be returning to Vallarta because he got a new job as a truck driver that paid much more than Vallarta. Juan stated that Auden did not tell him the name of the trucking company or any other details regarding his new job.

Statement from Juan Sanchez was digitally recorded and uploaded into DAMION.

Tuesday
03/01/15
1000 hrs

I obtained a printout of the weather history for Visalia, California for Thursday, January 30, 2014, the day of Auden's alleged fall. Auden stated it was raining that morning. This information was retrieved from website, <http://www.wunderground.com>.

(Exhibit #4)

The weather for Thursday, January 30, 2014, was indicated as follows on pages 1-4.

Temperature

Mean Temperature	52 °F
Max Temperature	55 °F
Min Temperature	48 °F

Moisture

Dew Point	42 °F
Average Humidity	71
Maximum Humidity	87
Minimum Humidity	54

Hourly Weather History & Observations

<u>Time (PST)</u>	<u>Temp.</u>	<u>Dew Point</u>	<u>Humidity</u>	<u>Precipitation</u>	<u>Conditions</u>
6:35 AM	51.8°F	39.2°F	62%	N/A	Partly Cloudy
6:55 AM	51.8°F	39.4°F	58%	N/A	Clear
7:15 AM	50.0°F	39.2°F	66%	N/A	Clear

Evidence

Exhibit #1	Compact Disc from Attorney Geoffrey Greenup (Evidence locker)
Exhibit #2	Documents received from Anabelle Zenteno Vallarta Supermarkets
Exhibit #3	Benefits and total loss documents from Sedgwick CMS Insurance ISO Claim Search match report Summary of Auden Gutierrez Claim File Demand Package Update Report Workers' Compensation Claim submitted by Auden Gutierrez on July 18, 2003
Exhibit #4	Thursday, January 30, 2014, Weather History Report for Visalia, California

Conclusion

Investigation is ongoing.

TULARE COUNTY DISTRICT ATTORNEY'S OFFICE
Bureau of Investigations
Case Report



DEFENDANT/SUBJECT: GUTIEREZ, AUDEN		DATE: 3/18/15
OFFENSE: I.C.1871.4 (a)(1)	VICTIM: SAFETY NATIONAL CASUALTY CORPORATION	
CASE NO.: 14-01-000487 DA NO: [DA #]	SUBMITTED BY: ALONSO GUTIERREZ	
APPROVED BY: GIL CARDENAS <i>[Signature]</i>	DATE: 4/20/15	

Suspect(s)

Auden Gutierrez
194 South Elm Street
Pixley, CA, 93256

Persons contacted

W-4 Anabelle Zenteno
W-6 Jack A. Bair
W-7 Daniel Puga
W-8 Otilia Arellano
W-9 Claudia Aplicano
W-10 Martha Martinez

Investigation

Friday
03/06/15
1122 hrs

Statement from Anabelle Zenteno

Investigator Aide Cristal Rodarte and I contacted and conducted a digital recorded interview with W-4 Anabelle Zenteno at her employer located in Sylmar, California. I identified myself and nature of my contact.

Anabelle stated she is currently employed with Vallarta Supermarket as a Risk Management Supervisor. She has been assigned to that position since her date of employment, 1 year and 8 months ago. Her job consists of

assessing each incident from the intake of the injury, coordinate medical treatments, follow-up, ongoing auditing of the claim and investigations.

A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Anabelle Zenteno. Anabelle identified the individual on the photo as Auden Gutierrez. I asked Anabelle how she knows Auden. She stated she knows Auden by the information they received regarding the injury. Anabelle stated the date of injury was January 30, 2014. Vallarta received notification from the store due to multiple red flag indicators of possible fraud and coordination for medical treatments, then an investigation was initiated.

Anabelle Zenteno identified the following documents as the documents she sent me via email on February 18, 2015. These documents are listed under Exhibit #2.

- **Injury Management Report from Valley Industrial & Family Medical Group**
- **Physician's Report of Work Status from Valley Industrial & Family Medical Group**
- **Doctor's First Report of Occupational Injury or Illness and Work Release Form for Auden Gutierrez**
- **Copy of a letter stating that Auden called work to tell them he was not coming in to work because he had sustained an injury at home**
- **Investigation Report from Investigator Jack A. Bair**

I asked Anabelle if she knew who the individual was that spoke to Auden by telephone a couple days prior to his alleged injury. She stated it was a supervisor who spoke to Auden that day. Auden called indicating he had an accident at home fixing a chicken coop.

Anabelle also provided me with 3 compact disc copies of additional video surveillance of Auden Gutierrez. The 3 videos contained the incident, Auden walking through the store to the front office and Auden walking out of the store, all after the incident. I later viewed all 3 compact disc videos and discovered that all 3 contained the same video surveillance footage. Therefore, I kept 2 for working purposes and the 3rd video was later booked into evidence.

(Exhibit #5)

The following documents were also obtained from Anabelle Zenteno.

- **Auden's Employment Application**
- **Employee Performance Evaluations**
- **Employee Profile**
- **Time & Attendance – Employee Timecard Report**
- **Payroll Check History Report**
- **Rapid Urine Drug Screen Results, Alcohol testing Form and Doctors First Report from Valley Industrial & Family Medical Group**
- **Emails between Anabelle Zenteno and Supervisors from Vallarta Supermarket**
- **Employee Disciplinary Action Notice**
- **California Unemployment Insurance Appeals Board**
- **Request Letter and Documents from the law Office of Vincent J. Quigg & Associates**
- **Subpoena Documents**

- **Employee Status Letters**
- **Cal Quest Investigations Report completed by Sr. Field Investigator Caesar Gonzalez**

(Exhibit #6)

Statement from Anabelle Zenteno was digitally recorded and uploaded into DAMION.

1153 hrs

Statement from Jack A. Bair

Investigator Aide Cristal Rodarte and I contacted and conducted a digitally recorded interview with W-6 Jack A. Bair at his employer located in Sylmar, California. I identified myself and nature of my contact.

Jack stated he has been employed with Vallarta since August 1, 2013. He is currently employed as the Risk Management Manager. His duties consist of general liability property auto claims through the company insurance. He is also in-charge of purchasing and maintenance of the company's auto fleet along with workers' compensation accident investigations.

Jack stated his workers' compensation investigations are not usually to determine if it's a fraudulent claim or not. His investigations are done to determine the root cause of the accident and what Vallarta can and needs to do to make it safer, either by changing policy or training. In some cases, his investigations determine that it was the employee who did something wrong.

A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Jack. He stated he did not recognize the individual on the photo because he never met him in person. However, he did recognize the name because he conducted the investigation on Auden Gutierrez.

Jack viewed a copy of a report I obtained from W-4 Anabelle Zenteno. He identified the report as his own investigation report on Auden Gutierrez. He did not interview Auden Gutierrez during his investigation because Auden did not show up for the interview.

Statement from Jack A. Bair was digitally recorded and uploaded into DAMION.

Wednesday

03/11/15

1025 hrs

I reviewed the documents received from W-4 Anabelle Zenteno. The document from Valley Industrial & Family Medical Group dated February 3, 2014, indicated that the Rapid Urine Drug Screen Results for Auden Gutierrez tested negative.

I also reviewed Investigator Caesar Gonzalez's investigation report from Cal-Quest Investigations, Inc. Caesar interviewed Andrea Munoz, Daniel Puga and Claudia Aplicano. Investigator Gonzalez indicated in his report that after comparing the video to Auden Gutierrez's version of the incident, witness Munoz, Applicano and Puga formed the opinion that Auden Gutierrez is lying about being injured at work.

Investigator Gonzalez indicated in his report, that he recommended Sub-Rosa surveillance be conducted on claimant Gutierrez. The Sub-Rosa will reveal claimant Gutierrez's claim of back injury to either be grossly exaggerated or completely false.

For additional detailed information, refer to Investigator Caesar Gonzalez's investigation report.

Thursday
03/12/15
0911 hrs

Statement from Daniel Puga

I contacted and conducted a digital recorded interview with W-7 Daniel Puga. The interview was conducted at 725 North Alta Avenue Dinuba, California.

Daniel stated he worked for Vallarta Supermarket for 3 years. His job duties consisted of shipping and receiving. A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Daniel Puga. Daniel identified the individual on the photo as Auden Gutierrez. He stated he knows Auden from working with him at the Tulare Vallarta store. I asked Daniel if he was aware of Auden's work related injury. He stated "Yes, something about his back, he slipped and fell and hurt his back."

Daniel viewed the surveillance video I obtained from W-4 Anabelle Zenteno. The surveillance video is dated January 30, 2014. Daniel Puga identified himself, Auden Gutierrez and Claudia Aplicano on the following video surveillance time frames.

Camera #10 Outside the Receiving Dock and Trash Compactor Area

- 06: 50:23 Daniel identified himself in the video.
- 06:51:45 Daniel identified Auden in the video surveillance. I asked Daniel how he knew it was Auden. He stated that Auden always wore a black beanie.
- 06:51:46 Daniel stated, "it was kind of weird, Auden seemed to be going through the motions of throwing away trash, then he stepped back and felt his back, maybe he was preparing himself to throw away trash."
- 06:54:02 Daniel identified himself driving the forklift in the back dock area.
- 06:55:00 Daniel identified Auden pushing a trash bin in the receiving dock area by the trash compactor.
- 06:55:32 Daniel identified Auden throwing trash into the trash compactor. After viewing the video of Auden's alleged fall, Daniel stated, "It's kind of fishy, he looks back then he falls, it's kind of weird, he does a double take, to make sure if I was looking or not looking."

I asked Daniel if he saw Auden slip and fall in the surveillance video. Daniel stated, "I didn't see him slip, it looks like he kind of lunges forward and then turns slightly."

- 06:55:51 Daniel stated while on the forklift he heard a yell, or some sort of loud grunt, it caught him off guard because he didn't really know what it was. It was at that moment he saw Auden on the floor. Daniel stated he went to see if he was okay. He stated that Auden told him he either fell or slipped, he really can't remember. He stated, "It's been so long, it's been more than a year." Daniel stated he then called Claudia via phone intercom to inform her that Auden had fallen.
- 06:57:04 Daniel identified Claudia, Auden and himself in the video. Claudia and Daniel approach Auden. He stated that Claudia was really worried about Auden.
- 06:57:43 Daniel stated he proceeded to help Auden up. While he was helping him up, Auden was grunting.
- 06:58:01 Daniel, Claudia and Auden walk inside the building.
- 06:59:21 Daniel identified a third individual in the video as a Pepsi vendor. The individual is seen on video, stepping onto the trash compactor's floor plate ramp. He then slides his right foot, back and forth on the ramp, then walks away. Daniel stated, "It appeared as if the individual was checking to see if the trash compactor floor plate was slippery or slick."

Camera #9 Walking Through the Produce Department

- 06:59:11 Daniel identified Claudia, Auden and himself walking through the produce department.

Camera #12 Walking to the Front of the Store

- 06:59:15 Daniel identified Claudia, Auden and himself walking towards the front of the store.

Camera #15 Walking Towards the Produce Department from the Back Warehouse.

- 06:29:55 Daniel identified Claudia, Auden and himself.

Camera #16 The Clock In/Out area

- Daniel identified Claudia, Auden and himself. Daniel also identified Auden while clocking out.
- 07:06:34 Auden's second attempt to clock out.
- 07:08:20 Auden's third attempt to clock out.
- 07:08:28 Auden clocks out and leaves the clock In/Out area.

Camera #15 Walking Out of the Store to the Parking Lot

- 07:09:02 Daniel identified Auden exiting the store to the parking lot area.

I asked Daniel if it was raining on the day of Auden's alleged injury. Daniel stated he couldn't remember. He stated the back dock area is covered. He was still able to use the forklift even if it was raining. The trash

compactor area is also somewhat covered, but every once in a while it will get some moisture from the fog. Daniel stated even when it rains, the trash compactor area doesn't get too wet, where it may become dangerous.

Daniel stated they had issues with the trash compactor area, because it was always dirty. People threw trash away, but never cleaned the area around the trash compactor. He recalls this, because he was the designated person that had to clean it up. Daniel stated the trash compactor platform is somewhat raised at an angle, and sometimes it can be slippery because of the trash.

After viewing the video surveillance, I asked Daniel, "In your opinion, do you think Auden actually slipped?" Daniel stated "I wasn't watching him, but from what the video shows, it's kind of hard to believe, I'm not saying he didn't, it's just hard to believe." Daniel stated he did not see Auden Fall. When he approached Auden, he was in a sitting position leaning back against the trash compactor railing.

I showed Daniel a video surveillance clip from camera #10, timeframe, 07:00:55. In this video clip, Daniel is seen approaching the trash compactor area. He closes the trash compactor lid and then walks somewhat around the trash compactor while looking down, as if to be looking for something. After watching the video clip, I asked Daniel why he went back to the trash compactor area and what he was looking for. Daniel stated, "I guess to see if it was slippery or not." Daniel stated he did not notice any water around the trash compactor area.

Statement from Daniel Puga was digitally recorded and uploaded into DAMION.

1002 hrs

Auden stated in his June 27, 2014, deposition that he went to Tijuana, Mexico on the day of his alleged injury, to visit his sick father.

I contacted Special Investigator Mathew Larson from the Department of Homeland Security Investigations via telephone. I identified myself and nature of my contact. I asked Agent Larson if could run a border crossing check into Tijuana, Mexico and back into the United States, associated with Auden Gutierrez. I requested the subject query check from January 30, 2014, through February 3, 2014.

Auden's June 27, 2014, deposition

-Page 44. (Line 6-7) - (Question) Your wife said you went to Tijuana to Visit your sick brother, correct?

-Page 44. (Line 8) - (Answer) That is true.

-Page 44. (Line 9-11) - (Question) So you went to Tijuana to avoid taking a drug test? Did you actually go to Tijuana? Or was that another Lie?

-Page 44. (Line 12-13) - (Answer) I went, my father was sick. It was an emergency.

-Page 52. (Line 4-5) - (Question) Did you go to Tijuana on the day you reported the injury?

-Page 52. (Line 6) - (Answer) Yes, it was an emergency.

-Page 52. (Line 7) - (Question) And you came back that night? Or the next morning?

-Page 52. (Line 9-10) - (Answer) That night, because it was hurting a lot. And the next day I went to the emergency.

-Page 53. (Line 10-12) - (Question) So you went home in excruciating pain, your wife said you have to go to Tijuana, and you went to Tijuana.

-Page 53. (Line 13) - (Answer) Yes.

Friday
03/13/15
1341 hrs

I contacted Case Manager Lisa, from Cal-Quest Investigations via telephone. I identified myself and nature of my contact. I asked Lisa if Cal-Quest Investigations conducted Sub-Rosa surveillance on the Auden Gutierrez investigation. Lisa stated that no Sub-Rosa surveillance was done regarding this case.

Tuesday
03/17/15
0958 hrs

I received an email from Special Agent Mathew Larsen. The email stated that there are no border crossings associated with Auden Gutierrez, whether he was in a car, plane, ship or pedestrian. Agent Larsen also included a copy of TECS II – Person Subject Query of Auden Gutierrez, indicating no match found.
(Exhibit #7)

Wednesday
03/18/15
1721 hrs

I received an email from W-4 Anabelle Zenteno. The email contained copies of Auden Gutierrez's timecard. The timecard indicated that Auden clocked in to work at 5:57 a.m. on Thursday, January 30, 2014, and clocked out at 7:08 a.m. that same morning.
(Exhibit #8)

Auden stated in his June 27, 2014, deposition, that on the day of his alleged injury, his supervisor did not let him leave work until 2:00 p.m.

Auden's June 27, 2015, deposition

-Page 42-43. (Line 24-25 & 1) - (Question) And then, when you reported the injury, Claudia began to make arrangements for you to go to the Industrial Clinic that same day; is that right?

-Page 43. (Line 2-5) - (Answer) Well, I told her, and she told me to wait. And I was there until about 2:00 in the afternoon. And it was hurting so much I went to the emergency at the hospital, and there is where they treated me.

-Page 43. (Line 14-15) - (Question) You told her you were in so much pain you didn't want to wait, and that you were going home; is that right?

-Page 43. (Line 17-19) - (Answer) Yes, it was 2 o'clock, and she would not let me go to the clinic. And that is when I went to the hospital, like, about 2 o'clock.

-Page 43. (Line 20-21) - (Question) You went to the emergency room the next day; correct?

-Page 43. (Line 22) - (Answer) Yes.

Vallarta Video Surveillance Footage From Camera #16

07:08:28 - Auden is seen on video clocking out of work.

Vallarta Video Surveillance Footage From Camera #15

07:09:02 - Auden is seen walking out of the store to the parking lot.

Tuesday
03/24/15
1108 hrs

Statement from Otilia Arellano

Investigator Beatriz Reveles and I contacted and conducted a digital recorded interview with W-8 Otilia Arellano. The interview was conducted at 908 99 W. Street Corning, California. I identified myself and nature of my contact.

Otilia stated she is no longer employed at Vallarta Supermarket. She worked for Vallarta Supermarket for 4 years and her last day of employment was on May 4, 2014. While employed at Vallarta, Otilia worked as the District Lost Prevention Manager. She stated she was the only lost prevention employee in her district.

A photograph of an individual I obtained from the California Department of Motor Vehicles Record Image was shown and viewed by Otilia Arellano. Otilia identified the individual on the photo as Auden. I asked Otilia how she knows Auden. She stated she knows Auden, from seeing him around Vallarta as the maintenance worker. I asked Otilia if she was familiar with the Auden's alleged fall. She stated yes, "this case was a slip and fall case." She stated in a situation where a customer or an employee falls, the video is downloaded and sent directly to Risk Management at the Corporate Office.

I showed Otilia video clips from the surveillance videos I obtained from W-4 Anabelle Zenteno. Otilia viewed the video surveillance clips from Camera's 9,10,12,15 and 16. She identified the video clips as the same video

surveillance she retrieved regarding Auden's alleged fall. Otilia stated she was asked to retrieve the video surveillance from the Corporate Office, Risk Management Department.

Otilia also identified Auden Gutierrez in the video surveillance. I asked her how she knew the individual in the video is Auden. She stated the reason she knew it was Auden, was because she was in the store on the day of the incident.

I asked Otilia if Vallarta Supermarkets has a protocol regarding retrieval of video surveillance. Otilia stated, yes. She locates the specific date and time requested from the Corporate Office then she downloads the video from the DVR to a DVD. She then labels the DVD with the date, time and name of the individual, before sending it via mail, directly to the Corporate Office. Otilia stated she conducted the video surveillance retrieval within protocol.

I asked Otilia if the video surveillance she retrieved regarding Auden Gutierrez, was manipulated in any way. She stated, "no and that no one else had access to the video."

Statement from Otila Arrellano was digitally recorded and uploaded into DAMION.

Tuesday
04/09/15
0336 hrs

Statement from Claudia Aplicano

I contacted and conducted a digital recorded interview with W-9 Claudia Aplicano at her employer, Vallarta Supermarket located in Visalia, California. The interview was conducted in Spanish.

Claudia stated she has been employed with Vallarta for 10 years. She is currently the Assistant Store Director.

A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Claudia. She identified the individual on the photo as Auden Gutierrez. Claudia stated she knows Auden as a former maintenance employee who worked at the Tulare, Vallarta store. She worked with Auden for approximately 1 ½ to 2 years.

I asked Claudia if she is aware of Auden's alleged fall. Claudia stated yes, she recalls opening the store that morning and it was approximately 7:00 a.m. when she received a telephone call from receiving. The employee asked her to come to the back receiving area. When she arrived at the back dock area, she recalls seeing Auden sitting on the floor by the trash compactor. She couldn't recall who told her, either the forklift driver or Auden, that Auden had slipped while throwing a trash bag into the trash compactor. I asked Claudia if she recalls seeing any water on the ground. She stated, "no, no, there was no water on the ground that day." She also recalls that it was not raining that day, because that morning, she walked out of the store in an attempt to contact Auden after he had left and it was not raining.

I asked Claudia if she offered Auden medical attention after his alleged fall. She stated yes, "it's part of our responsibilities." Claudia stated Auden did not go to Vallarta's medical clinic that day. She stated after Auden's alleged fall she took Auden to the office so she can start making arrangements for him to go to the clinic. She asked Auden to wait in the office while she made arrangements. Auden told her no, he was not going to wait and

left. Claudia stated from the time of Auden's alleged fall to the time he left the store, approximately 20 minutes or less had passed. Claudia stated Auden did not return to work after his injury. Auden's wife called the store to say that Auden went to Tijuana, Mexico for an emergency to visit his sick brother. Auden also called Vallarta to inform them that he did not return to work that day because he had gone to Tijuana on an emergency. Claudia also stated that she called Auden in an attempt to speak to him, but spoke to his wife instead. Claudia told Auden's wife that they were waiting for Auden to return to work so he can be taken to the clinic.

Claudia viewed the surveillance video I obtained from W-4 Anabelle Zenteno. The surveillance video is dated January 30, 2014. Claudia Aplicano identified herself, Auden Gutierrez and Daniel Puga on the following video surveillance time frames.

Video Surveillance Footage from Camera #10

06:48:31 - Claudia identified Daniel Puga on the receiving dock.

06:51:41 - Claudia identified Auden by the trash compactor area.

06:51:45 - Claudia stated Auden appears to be leaning on the rail, possibly stretching.

06:55:03 - Claudia identified Auden and Daniel Puga in the video surveillance. After viewing this video clip, I asked Claudia what she saw in the video surveillance. Claudia stated, "Auden grabbed a trash bag, looked back then threw himself to the ground."

06:57:04- Claudia identified herself, Daniel and Auden. In this video clip, Claudia is seen approaching Auden as he is sitting down leaning up against the railing. Claudia stated she asked Auden what happened and if he was okay. Auden told her that his back was hurting.

After viewing the video surveillance clip from camera#10, I asked Claudia, "In your opinion, what do you think happened? Do you think he slipped?" She stated, "First of all, we all wear slip resistant shoes so, even if you step in grease or water, you won't slip, unless you loose your equilibrium." "From what I can see, the first bag was not heavy, the second bag was not heavy, the third bag he lifted with ease to a point, then he threw it without any obvious signs of pain or discomfort."

Claudia stated Vallarta Supermarkets conduct two safety meetings daily. The first safety meeting is done at 6:45 a.m. and second one is done in the evening, between 9:30 p.m. and 10:00 p.m. Claudia stated Auden attended the morning safety meeting, prior to his alleged fall.

Claudia also stated, "For example, trash bags contain trash and liquids from every department and if some of that liquid spills out of the trash bag, one should not slip because of their slip resistant shoes." Claudia stated, "In these shoes, if I walk on grease while in the taco shop or in the meat department, I'm not going to slip because these shoes are made to be slip resistant." Vallarta employees are required to wear slip resistant shoes while at work. The employees are checked on a daily basis, to make sure they are wearing the proper shoes for work. I asked Claudia if Auden was wearing his required slip resistant shoes on the day of his alleged fall. She stated "To be honest, I'm not sure, because that day it was my responsibility to conduct the shoe check, but I didn't do it."

Claudia also identified Auden on the following video surveillance footage from camera's 10, 15 and 16. In the video footage, Auden is seen clocking out at 07:08 a.m. and walking out of the store to the parking lot.

Claudia stated she is not sure if Auden went to Tijuana on the day of the alleged injury or if he went over the weekend. Claudia stated they called Auden's wife to tell her they were waiting for Auden to return to work so he can be taken to the medical clinic. She stated she can't remember if it was on Friday or Saturday that Auden's wife or son called to tell them that Auden went to Tijuana for an emergency. Auden did not return to work until Monday the following week.

Statement from Claudia Aplicano was digitally recorded and uploaded into DAMION.

Thursday
04/16/15
1134 hrs

Statement from Martha Martinez.

I contacted and conducted a digital recorded interview with W-10 Martha Martinez at her employer, La Fuente Restaurant located in Porterville, California. I identified myself and nature of my contact.

Maratha stated she is no longer employed at Vallarta Supermarkets. She worked for Vallarta as a Front End Manager for 4 years and her last day of employment was on April 21, 2014.

A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Martha Martinez. She identified the individual on the photo as the maintenance guy, but couldn't remember his name. I asked Martha if she is aware of the individual's alleged injury. Martha stated, "Yeah, he told me, I was there." Martha stated she worked that day. She stated that Auden told her he fell while throwing away trash into the dumpster, he fell inside. The trash bin pushed up against him causing him to slip and fall.

A copy of a Spanish hand written statement that I obtained from Anabelle Zenteno was viewed by Martha Martinez. This document is listed under Exhibit #2. She identified the document as a statement she wrote and the signature as her own. I asked Martha if she recognized the letter and what she wrote. She stated, yes. She stated Auden called to say that he was not coming to work because he had an incident at home. Auden told her that a piece of wood fell on his hip. She told him to wait while she informed Claudia that he wasn't coming into work. When she returned from talking to Claudia, Auden had already hung up. I asked Martha how she knew the individual on the phone was Auden. She stated that she recognized his voice and that he also identified himself by name. Auden called around 7 or 8 a.m., however, Auden still showed up to work that afternoon at 12 p.m. and worked the entire shift without any signs of pain. Auden told her that it was just the flu.

Martha stated Auden had called in sick several times and everyone noticed that he didn't want to work. Auden always got into arguments with co-workers. The co-workers complained that Auden didn't want to do anything.

Prior to concluding the interview, Martha identified the date on the document as January 26, 2014, along with her signature and also stated that the statement was written by her.

Statement from Martha Martinez was digitally recorded and uploaded into DAMION.

Evidence

- Exhibit #5 Copy of one compact disc video surveillance received from Anabelle Zenteno (Evidence Locker)
- Exhibit #6 Additional documents received from Anabelle Zenteno
- Exhibit #7 TECS II – Person Subject Query from Special Agent Mathew Larson
- Exhibit #8 Timecard Printout for Auden Gutierrez dated 12/02/13 – 03/01/14


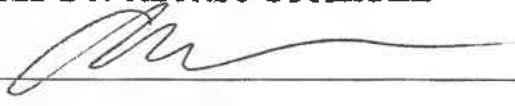
Conclusion

Investigation is ongoing.

TULARE COUNTY DISTRICT ATTORNEY'S OFFICE

Bureau of Investigations Case Report



DEFENDANT/SUBJECT: GUTIERREZ, AUDEN		DATE: 5/1/15
OFFENSE: I.C.1871.4 (a)(1)	VICTIM: SAFETY NATIONAL CASUALTY CORPORATION	
CASE NO.: 14-01-000487 DA NO: [DA #]	SUBMITTED BY: ALONSO GUTIERREZ	
APPROVED BY: GIL CARDENAS 	DATE:  5/4/15	

Suspect(s)

Auden Gutierrez

Persons contacted

W-11 Dr. Marcus E. Vaughn

Investigation

Friday
05/01/15
0948 hrs

Statement from Dr. Marcus E. Vaughn

I contacted and conducted a digitally recorded interview with W-Dr. Marcus E. Vaughn at his employer located in Visalia, California. Dr. Vaughn stated he is currently a chiropractor and has been in practice since 1987.

A photograph of an individual I obtained from the California Department of Motor Vehicles Image Record was shown and viewed by Dr. Vaughn. Dr. Vaughn stated, "The face looks familiar, but I couldn't call him by name at all." I then asked Dr. Vaughn if he recognized the name. He stated, "I recognize his middle name, Auden."

I showed Dr. Vaughn a copy of Auden's Medical Examination for Commercial Driver's Fitness Determination document from the case file I obtained from Kern County Deputy District Attorney W-1 David Wolf. The medical exam was completed on April 23, 2014. I asked Dr. Vaughn if he completed this document. Dr. Vaughn stated, yes. I also asked Dr. Vaughn if he recognized the signature on the bottom of page 1, and he stated, "That

would be his (Auden's) signature." Dr. Vaughn stated this document is a medical examination report for the US Department of Transportation (DOT) for truck drivers. Truck drivers need to pass this exam in order to drive.

Dr. Vaughn read the first question on page 1 of the medical exam, which read, "Any illness or injury in the last five years?" The answer to the question was indicated as no on the document. I asked Dr. Vaughn if he or the patient completes the forms. Dr. Vaughn stated the patients are handed a blank copy of the form to complete first, then he will go over each question with the patient. Dr. Vaughn identified the signature on the bottom of page 4 as his own.

I asked Dr. Vaughn, if he read the questions to Auden from the medical exam form in English or in Spanish. He stated that most truck drivers understand English. He read the questions to Auden in English. If a patient is not bilingual, there will always be someone in the office to help translate. Most patients speak enough English for him to get the answers from them. DR. Vaughn stated he knows a fare amount of Spanish to do the exam, so he can usually get through it. Auden knew enough English that they were able to get through the exam.

Dr. Vaughn stated that on the bottom of page 1, it looks like his staff wrote in the high blood pressure information for Auden.

I asked Dr. Vaughn if Auden appeared to show any signs of pain or discomfort during his medical exam. He stated not to his recollection, because if he did, he would have written it in his notes on page 4 of the exam questionnaire.

Dr. Vaughn's staff stated there is no other medical exam for Auden Gutierrez in their records besides the medical exam that was completed on April 23, 2014.

Statement from Dr. Marcus E. Vaughn was digitally recorded and uploaded into DAMION.

Evidence

None

Conclusion

After conducting my investigation, it was determined that Auden Gutierrez's occupational injury he claimed that occurred on January 30, 2014, while working for Vallarta Supermarkets, did not occur. After interviewing several witnesses and reviewing the store video surveillance, it was determined that Auden Gutierrez's alleged slip and fall while throwing trash into the trash compactor was a misrepresentation for the purpose of obtaining workers' compensation benefits he would not be otherwise entitled to receive.

Based on the facts gathered in this investigation, it appears Auden Gutierrez willing and knowingly with intent, made a false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation. Auden Gutierrez allegedly violated section 1871.4(a) (1) and 1871.4 (a) (2) of the California Insurance Code. Auden Gutierrez also allegedly violated section 550 (a) (1), knowingly present or cause to be presented any false or fraudulent claim for the payment of loss or injury, including payment of loss or injury under a contract of insurance and 72 of the California Penal Code, presenting false claims.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

People Plaintiff, Counsel/DA: <u>Craig Gardner</u>	Jud. Officer: Joseph Kalashian Clerk: Regina Watkins Bailiff: CSR: Lesia Mervin
vs. Gutierrez, Auden Defendant. Counsel/VPD: <u>Greg Hill</u>	Interpreter: Maritza Castillo Language: Spanish Probation Officer: _____
DOB: 05-19-87	Case No. VCF318775 Department 5
Minutes: Preliminary Hearing Setting	Date: September 16, 2015
Charges: Ct 1: IC1871.4(A)(1) Ct 2: IC1871.4(A)(2) Ct 3: PC550(A)(1)	
Bond	

- Defendant present in custody without attorney with/by attorney
- Court makes interpreter findings on the record pursuant to GC 68561(g)/GC 68561(f)
- Defendant failed to appear Bail forfeited Bench Warrant to issue with bail set at \$ _____
- Bench Warrant Recalled Remain Withdrawn. Bail Bond Forfeiture Set Aside Bail Bond Reinstated Bail Bond Exonerated Summary Judgment Date is Vacated.
- Public Defender declares a conflict. Public Defender relieved as counsel.
- Conflict Counsel appointed. Defendant to obtain own counsel.
- Defendant obtained private counsel. _____ substituted in as attorney of record.
- Defendant waives right to counsel. DDA _____ states People are not ready to proceed at this time.
- On motion of DDA _____ /Court case/count(s) _____ dismissed.
- On motion of DDA _____ complaint/count(s) _____ amended to _____
- Defendant withdraws plea of NOT GUILTY and enters a plea of GUILTY NOLO CONTENDERE
-
- Written waiver filed Oral waiver taken. Admonished pursuant to VC23593(a) PC1016.5
- Time for sentence waived. No legal Cause. See sentence sheet. No Probation Ordered.
- The above named defendant, being charged in this complaint on file in Court under the above case number, and having waived Preliminary Examination on the charges, the Court and District Attorney consenting thereto, it is ordered that the Defendant be held to answer the same.
- Indicated sentence: Pleasds to a felony & if restitution paid then reduced to a misd.
- Indicated based on Defendant's record represented in Court on 9/16/15.
- The above named defendant, being charged in this complaint on file in Court under the above case number, and having entered a plea of GUILTY NOLO CONTENDERE to the charge(s) of Ct 1
- pursuant to People vs. West with Harvey Waiver.
- Spec. Allegation(s) _____ admitted.
- On motion of DDA _____ count(s) _____ and/or Spec. Alleg(s) _____ to be dismissed at the time of judgment proceedings.
- Court finds a knowing, intelligent, voluntary, understanding and explicit waiver.
 - Court finds Factual Basis for Plea Counsel stipulate based on police report
 - Defendant waives time 10 day rule 60 day rule
 - Matter referred to the Probation Department for Report and Recommendation.
 - Contact Probation to set up interview on ____/____/____.
 - Recovery Court Referral Form given to defendant. Abbreviated Report Full Report.
- PRELIMINARY HEARING DATE OF ____ / ____ / ____ VACATED CONFIRMED DEPT#3.

DIST: DA PD DEF JAIL ATTY PROB CITY ATTY DOC

- Defendant is Ordered to return to Court at the next Court hearing date.
- Matter set / / at am pm Dept. for _____
- Matter set / / at am pm Dept. for _____
- Continued by Court by Counsel for People by Counsel for Defendant Stipulated by both parties
- Lack /additional discovery further investigation witnesses unavailable.
- Upon Motion of _____ witnesses excluded (P.C. 867).
- If \$16,321.87 not paid off then case will remain a felony

Defendant to try to make a substantial payment by next court date at least \$2,000 by Feb

- Defendant fingerprinted in open court. Card Secured in File.
- Formal Reading of the Complaint Waived. Preliminary Hearing Held.

WITNESS SWORN AND TESTIFIED	EXHIBITS	mrk'd	rec'd
1.	<input type="checkbox"/> P <input type="checkbox"/> D#:	<input type="checkbox"/>	<input type="checkbox"/>
2.	<input type="checkbox"/> P <input type="checkbox"/> D#:	<input type="checkbox"/>	<input type="checkbox"/>
3.	<input type="checkbox"/> P <input type="checkbox"/> D#:	<input type="checkbox"/>	<input type="checkbox"/>
4.	<input type="checkbox"/> P <input type="checkbox"/> D#:	<input type="checkbox"/>	<input type="checkbox"/>
5.	<input type="checkbox"/> P <input type="checkbox"/> D#:	<input type="checkbox"/>	<input type="checkbox"/>

- People rest. No affirmative defense presented. People move to have the defendant Held to Answer.
- _____ Defense submits. Arguments heard.
- Court orders exhibit(s) released to _____ for safekeeping. People Defense Exhibit(s) returned to _____.
- Preliminary examination was held on the above date and it appearing to the above Judge that a felony violation of _____ has been committed and that there is sufficient cause to believe the named defendant guilty thereof, it is ordered that he be held to answer.
- Defendant ordered to appear in Superior Court on 2/16/16 at 8:30 am pm Dept. 5 for Felony Arraignment Judgment Proceedings.
- The Court not having heard sufficient evidence to hold the defendant to answer, ORDERS the matter Discharged/Dismissed as to _____ Defendant committed to custody of Sheriff with bail at \$_____.
- Defendant released remain on his own recognizance. Defendant to remain free on bail.
- Immediately contact the Probation Department.
- Defendant ordered released discharged as to this case only.

BY _____ DEPUTY CLERK OF THE ABOVE NAMED COURT
 BY _____ JUDGE OF THE TULARE COUNTY SUPERIOR COURT
 RELEASE ON OWN RECOGNIZANCE

DEFENDANT, BEING RELEASED ON HIS OWN RECOGNIZANCE, PROMISES THAT: (1) He/She will appear at all times and places, as ordered by the court or magistrate and as ordered by any court in which, or any magistrate before whom, the charge is subsequently pending; (2) He/She will obey all reasonable conditions imposed by the court or magistrate; and (3) He/She will not depart this state without leave of the court. Defendant agrees to waive extradition if the defendant fails to appear as required and is apprehended outside of the State of California. Any court or magistrate of competent jurisdiction may revoke the order of release and either return him/her to custody, or require that he/she give bail or other assurance of his/her appearance as provided in the Penal Code. If he/she willfully fails to appear at a scheduled court appearance, he/she may be charged with the additional charge of Failure to Appear (Penal Code section 1320). If released on own recognizance on a misdemeanor charge, failure to appear may result in a separate misdemeanor charge which may result in an additional penalty of six months in jail and/or a thousand dollar (\$1,000.00) fine. If released on own recognizance on a felony charge, failure to appear may result in an additional penalty of imprisonment in a state prison, or in the county jail for not more than one year, and/or a five thousand dollar (\$5,000.00) fine, or both that fine and imprisonment.

Defendant, by placing his/her signature below, acknowledges that he/she has read and understood the above promises and agreements he/she is making, and has been informed of the consequences and penalties applicable to violation of the conditions of release.