

No. \_\_\_\_\_

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IN THE

# Supreme Court of the United States

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TEDDY MOORE,

*Petitioner,*

—v.—

CHRISTOPHER BRAMWELL,  
NYC POLICE DEPARTMENT, NEW YORK CITY,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE STATE OF NEW YORK

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## PETITION FOR A WRIT OF CERTIORARI

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## **QUESTION(S) PRESENTED**

Whether the State Supreme Court of King County NY, The Supreme court appellate division second NY, and the Court of Appeal of the state of New York, violated appellant's constitutional rights for a jury trial, for a fair and impartial judiciary and for due process.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page except for Frank Guerra that a judgment by default entered against him and is not a party.

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

### **OPINIONS BELOW**

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appx. 1a and 2a to the petition and is unpublished.

The opinion of the motion for reconsideration appears at court appears at Appx. 1a to the petition and is unpublished.

### **JURISDICTION**

For cases from **state courts**:

The date on which the highest state court decided my case was March 27, 2018. A copy of that decision appears at Appx. 2a.

A timely petition for rehearing was thereafter denied on the following date: 6/12/2018 and a copy of the order denying rehearing appears at Appx. 1a.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Violation of constitutional rights for a jury trial for a fair and impartial judiciary and for due process.

### **STATEMENT OF THE CASE**

Petitioner filed a lawsuit against Defendants in case 4895/2010 in the State Supreme Court in Kings County NY. On 2/9/2011, the parties appeared in court on a motion and cross motion for summary judgment and the judge decided to dismiss Plaintiff's causes of action with the exception of the cause of action for malicious prosecution (See Appx. 9a).

The case proceeded to the jury in case 4895/2010 in Kings County at the end of 2011, to be adjudicated on the only cause of action for malicious prosecution.

Defendant's officer of the court along with the judicial officer of the court decided to perpetrate a fraud upon the court, by presenting to the jury a cause of action that was dismissed for false arrest. More specifically, the judicial officer, Judge Kathy J. King, charged the jury with a defense for false arrest so called: "Probable cause to arrest." Knowingly full well that this is a fraud perpetrated upon the jury and the court. (See Appx. 11a)

"Probable cause to arrest" is no defense for malicious prosecution and is not an element of malicious prosecution and thus it was irrelevant

for adjudication as a cause of action of malicious prosecution

Probable cause to arrest is a defense for “false arrest” and is not a defense for malicious prosecution or an element of malicious prosecution. “To establish a *prima facie* case for false imprisonment and false arrest the plaintiff must establish that he was arrested without probable cause or reasonable cause.” *Broughton v. State*, 37 N.Y.2d 451 (1975) as well, probable cause to arrest “Is a complete defense to a cause of action for false arrest.” Citing: *Holland v. City of Poughkeepsie* 90 A.D.3d 841 (2nd Dept. 2011) and *Fortunato v. City of New York*, 63 A.D.3d 880 (2d Dept. 2009). The elements of malicious prosecution Appear at *Novisky*, 491 F.3d at 1258 (Citing *Pierce*, 359 F.3d at 1291-97 (see citation at page 4, 5) The cause of action for false arrest was already dismissed from the case months before the parties appeared for the jury trial (Appx. 6a), and therefore it was futile to charge the jury with this cause of action again. (See Appx. 11a)

By charging the jury with the irrelevant cause of action for false arrest Judge King and the attorney for Defendants perpetrated fraud upon the jury.

Judge King declined to set a new jury trial, refused to recuse herself from the case for 3.5 years, even though she transferred the case against Guerra (Another defendant not a party in these litigations) for adjudication on damages before another arbiter.

An appeal to the appellate division to decide whether probable cause to arrest is a defense or

an element of malicious prosecution was not answered (See Appx. 12a) and the appellate division court decided as if "The trial of the action focused on the third and fourth elements" which has no basis in reality, because the only issue put for resolution was "Probable cause to arrest" and thus the decision of the appellate division is irrelevant and void.

The appellate division second increased the fraud upon the court by alleging that the lower court conveyed the applicable legal principals with respect to the cause of action to recover damages for malicious prosecution" (Appx. 11a) this is a fraud "which seriously affects the integrity of normal process of adjudication" See: *Gleason v. Janducko*, 860 F.2d 556, 559 (2nd Cir. 1988), as well the allegation as if petitioner filed a motion based on CPLR 4404 is a continuous fraud.

Finally, the court of appeals decided that order sought to be appealed does not "Finally determine the action" (See Appx. 2a) The Judges of the Supreme Court Kings County declined to comply with the order of the court of appeals and in fact closed the case contra to the decision of the court of appeals.

The decision of the court of appeals is in line with the decision by the federal court of appeals of the seventh circuit that decided: "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." *Kenner v. C.I.R.*, 387 F.3d 689 (1968) at provision 9.

Malicious prosecution contains the following elements: 1) The defendant caused Plaintiff's continuous prosecution 2) The original action

terminated in favor of plaintiff 3) No Probable cause to prosecute 4) Defendant acted with malice 5) Plaintiff sustained damages. (See: *Novisky*, 491 F.3d at 1258 (Citing *Pierce* 359 F.3d at 1291-97).

When the charge to the jury was irrelevant and false, the verdict by the jury was irrelevant and false and thus was set aside upon arrival as irrelevant and false.

By perpetrating fraud upon the jury the Judges of the Supreme court Kings County violated petitioner's constitutional rights for a jury trial: "Trial by a jury is a fundamental guarantee of rights of people and judges should not search the evidence with meticulous care to deprive litigants of jury trials" *Tarter v. US*, 17 F.Supp 691, 692, 93 (W.D Ky 1937). as well the right for a fair and impartial judge and for due process.

The refusal of the Judges of the Supreme court Kings county and /or the judges of the appellate division second department to comply with the orders of the court of appeal that decided that the action is not finally determined is a "willful refusal to obey an order" as happened in *Moore v. Judicial inquiry comm'n of Alabama*, 891 So.2d 848, 850, 854-55 Alabama (2004), as well "An order issued by a court with jurisdiction over the subject subject matter must be obeyed by the parties until it is reversed by orderly and proper proceeding" *U.S. v. Mine workers*, 330 U.S. 258, 293 (1947)

All courts have the equitable inherent power to vacate a judgment that was obtained by fraud upon the court see: *Universal oil products v. Roof Ref Co.*, 328 U.S 575, 580 (1946) in essence even

lower court judges may vacate a fraud upon the court perpetrated by a higher court judges.

"A decision procured by fraud upon the court is not in essence a decision at all, and never becomes final" *Kenner v. C.I.R*, 387 F.3d 689 (1968) at provision 9.

Fraud upon the court voids the process because of the fraud involved." It is axiomatic that fraud vitiates everything" *In Re: Village of Willowbrook*, 3711 App.2d 393 (1962)

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals" as "Fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. *Kenner v. C.I.R*, 387 F.3d 689 (1968).

A person has a right "Not to be framed by the government" and "We are unsure what due process entails if not a protection against deliberate framing under color of law of official sanctions" *Limone v. Candon*, 372 F.3d 39, 44.

A Judge that perpetrates a fraud on the court is obviously not fair and impartial. Positive proof of partiality is not necessary only the appearance of impartiality is necessary see; *Liljeberg v. Health Services*, 486 U.S. 847, 108 S.Ct 2194 (1988).

Currently the Supreme court Kings County closed the case, the appellate division second declined to sent the case to the jury and thus approved the lower court decision, the court of appeals decided continuously that the action is not finally determined but the lower court declined to accept the decision of the court of appeals which is

the highest court in New York, and because the court of appeals declined to sent the case to the jury too, thus in essence violated its own decision that the action is not finally determined. The continous decision by the court that the case is not finally determined is not the issue. The issue is that absent sending the case to the jury the case cannot be finally determined.

Obviously, the action is not finally determined and absent a decision to send the case to the jury the case cannot be finally determined.

### **REASON TO GRANT THE WRIT**

This is a case that runs already seven years in violation of petitioner's constitutional rights of a jury trial, fair and impartial judiciary and due process, when the court of appeal decided that the case is not finally determined contra to the lower court decisions that closed the case and not allowed to finally determine the action. It is therefore up to this court to allow finally to determine the action by sending the case to the jury.

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Date: July 24, 2018

Respectfully submitted,  
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