

No. 18-1339

In the Supreme Court of the United States

RICARDO FORNEZA JR. AND

MARK ANTHONY FORNEZA

Petitioners

v.

FIFTH THIRD MORTGAGE COMPANY

AND FIFTH THIRD BANK

15-02094

Respondents

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

17-20324

PETITION FOR REHEARING

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PETITION FOR REHEARING

This petition for rehearing, filed pursuant to Rule 44.2 of this Court, brings to the Court's attention the intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Obstruction of justice is committed when 9 trial exhibits were excluded as a clear error by the district court which blocked the truth from coming out and made Fifth Third to prevail in this case.

The rehearing rule traces back to British equity courts. Petition for Rehearing is important for any party because there were no higher courts to which litigants could appeal since the Chancellor's judgment was final. Parties seeking rehearing were required only to convince the Chancellor that rehearing was in the best interest of justice.¹

¹ The highest law court in Britain, by comparison, required litigants to show clear error before considering rehearing.

These nine (9) trial exhibits were submitted several times before the bench trial on August 3, 2016. These evidences are also submitted during the hearing and witnesses testified based on these trial exhibits because they are powerful evidence that petitioners want to present to the jury if the Court grants this Petition for Rehearing in this obstruction case to probe facts beyond reasonable doubts. The clear error was evident because the nine (9) trial exhibits were excluded on June 29, 2017, nine (9) months and 26 days after the bench trial was conducted on August 3, 2016.

Petitioners have demanded trial by jury from the very beginning of this case but the district court denied it for unexplained reason in violation of petitioners' constitutional right pursuant to Amendment 7 of the Bill of Rights.² If only trial by jury was conducted and petitioners' constitutional right was not violated, the lower court cannot exclude the nine (9) trial exhibits, and more than likely, the petitioners could prevail in this underlying case because the nine (9) trial exhibits are very powerful evidence to probe facts beyond reasonable doubts. A fair system and a fair process are very vital to level the playing field in the judicial review so that U.S. Supreme Court can exercise its constitutional duty to uphold the rule of law and protect petitioners of their constitutional rights to get the true justice that they deserve pursuant to 14th Amendment's Equal Protection Clause.³

² In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

³ The Equal Protection Clause of the 14th Amendment prohibits states from denying any person within its jurisdiction the equal protection of the law by treating that individual in the same manner as other people in similar conditions and circumstances.

Obstruction of Justice is a hot topic today and it was evident when Malik Cheatam submitted altered document and Kendra Wiley presented false affidavit under oath in order to pursue the willful foreclosure on May 5, 2015, committing obstruction of justice which is a clear error that warrants rehearing. The federal crime of obstruction of justice has three elements: an obstructive act; some kind of connections between the obstructive act and an official proceeding; and corrupt intent. When the facts and the evidence meet the elements of the rule of 18 U.S.C. § 1519, obstruction of justice is committed.⁴

Malik Cheatam performed an obstructive act when she made a false entry of a record and altered official record of Fort Bend Central Appraisal District by changing the names of Ricardo Fornesa Jr. and Cynthia Fornesa into Mark Anthony Fornesa and Judy Thanh Fornesa as the same Instrument #2015053907 in Malik Cheatam's Foreclosure Sale Deed to mislead the County Court in order to pursue the willful foreclosure and the fraudulent transfer of title to Fifth Third Mortgage Company of the Property R335432 which was consummated so that the truth was blocked to come out. This obstructive act is connected to willful foreclosure of the property in controversy conducted on May 5, 2015 when Malik Cheatam tampered government record. The corrupt intent succeeded unlawfully because the

⁴ Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

nonjudicial foreclosure was approved by the court so that the willful foreclosure happened on May 5, 2015. An obstruction of justice was committed by Malik Cheatam on May 5, 2015.

Last June of 2018, Mueller's prosecutors also charged Manafort with trying to influence witnesses who might be called to testify about his lobbying work for Ukraine. **When witness tampering charges were added, Manafort's bail was revoked and he was placed in solitary confinement for safety reasons.** During his statement to the court on Thursday, Manafort said he had time to "repent" during his time behind bars.⁵

Kendra Wiley performed an obstructive act when she submitted a false affidavit under oath in a foreclosure proceeding on May 5, 2015 stating that Registered Owners and Debtors Ricardo Fornesa Jr. and Cynthia Fornesa were not protected by automatic stay so that the truth was blocked to come out. This obstructive act is connected to willful foreclosure of the property in controversy held on May 5, 2015 when despite she had a knowledge of the bankruptcy case of debtors, Kendra Wiley had chosen to present an affidavit under oath that the registered owners are not protected by automatic stay. The corrupt intent succeeded unlawfully because the nonjudicial foreclosure was approved by the court so that the willful foreclosure happened on May 5, 2015. An obstruction of justice was committed by Kendra Wiley on May 5, 2015. Each of these incidents concerning the submission and presentation of evidence by Malik Cheatam

⁵ Dartunorro Clark et. al., *Paul Manafort sentenced to less than 4 years in prison after judge praises 'otherwise blameless life'* (June 30, 2019, 3:42 PM), <https://www.nbcnews.com/politics/politics-news/paul-manafort-trump-s-onetime-campaign-chairman-be-sentenced-fraud-n980496>.

and Kendra Wiley supported the “inference” of obstruction. They arguably met all three elements of the crime because Malik Cheatam and Kendra Wiley committed obstructive acts to thwart or impede a current foreclosure proceeding on May 5, 2015 with corrupt intent.

Michelle Fancher performed an obstructive act when she testified under oath during the trial on August 3, 2016 that petitioners called Fifth Third several times after the foreclosure on May 5, 2015, which is absolutely not true because petitioners never called Fifth Third after the foreclosure. This obstructive act is connected to a willful foreclosure of the property in controversy on May 5, 2015 when despite she had a knowledge that petitioners never called Fifth Third, she lied during the bench trial. She lied again during the trial when she testified that Fifth Third received the \$7,019.22 check on May 1, 2015 and not on April 29, 2015 so that the amount will become \$9,000.00 if the check was received on May 1, 2015 because of the additional one more month of mortgage payment if the check was received on May 1, 2019. The \$7,019.22 check to cure the default was received by Fifth Third on April 29, 2015 as per USPS Tracking No. EK362376418US; and therefore by April 30, 2015, the check was a full payment to cure the default which include all the late fees and all the penalties. The corrupt intent succeeded unlawfully because the trial judge accepted Michelle Fancher’s lying in court during her testimony. An obstruction of justice was committed by Michelle Fancher on August 3, 2016.

Pursuant to 18 USC § 1623, Obstruction of Justice, False Statements, and Perjury under federal law should criminalize Michelle Fancher’s statements and acts intended to interfere with the investigation of crimes and the administration of justice. Whoever under oath (or in any

declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.⁶

Obstruction of justice refers to Fifth Third Bank's Senior Vice-President P. Brian Moore as the "brain" behind this obstruction case when he purposely did not deposit the \$7,019.22 check when he received it on April 29, 2015. Had he deposited it on this day, the default should have been cured including late fees and penalties based on March 17, 2015 Mortgage Loan Statement presented as evidence in this case as the FULL PAYMENT as of April 30, 2015. Fifth Third claimed that it was only PARTIAL PAYMENT because P. Brian Moore claimed that he received it on May 1, 2015 so that he can claim that \$9,000.00 must be the amount of the check if May 1, 2015 mortgage payment is added to make it a FULL PAYMENT to cure the default.

The usual rule today in obstruction of justice is that new rulings apply to all cases that are still pending, both civil and criminal pursuant to 18 USC §1512(b). Supreme Court Justice William H. Rehnquist wrote that: "Only persons conscious of wrongdoing can be said to 'knowingly ... corruptly persuade,'" he said. "And limiting criminality to

⁶ Law Onecle, *18 USC 1623 – False Declaration Before Grand Jury or Court* (June 29, 2019, 2:44 PM),
<https://law.onecle.com/uscode/18/1623.html>.

persuaders conscious of their wrongdoing sensibly allows §1512(b) to reach only those with the level of 'culpability ... we usually require in order to impose criminal liability.'"⁷ P. Brian Moore's action in the obstruction of justice is wrongful, immoral, depraved, or evil" and which held that he was acting "knowingly ... corruptly" requires "consciousness of wrongdoing."

Michelle Fancher's noncompliance with the legal system by interfering with the law administration or procedures and not fully disclosing information or falsifying statements pursuant to 18 U.S.C. § 1505 – obstruction of proceedings before any department or agency of the United States. The U.S. Supreme Court derives its authority from Article III of the United States Constitution.⁸ Today, the Court's rule-making authority comes from the Rules Enabling Act,⁹ whereby the Court "and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business."¹⁰ Supreme Court Rule 44 articulates the Court's authority to rehear cases.¹¹ The first paragraph of the Rule provides that the Court can rehear

⁷ Law, *Three Supreme Court Obstruction Rulings Guided Mueller's Team* (June 30, 2019, 5:46 PM), <https://finance.yahoo.com/news/three-supreme-court-obstruction-rulings-060638723.html>.

⁸ U.S. CONST. art. III.

⁹ 28 U.S.C. §§ 2071 – 2077 (2006).

¹⁰ 28 U.S.C. § 2071(a) (2006). Section 2071(a) continues that the Court's rules must conform to 28 U.S.C. § 2072. *Id.* Section 2072 provides, "The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and courts of appeals." 28 U.S.C. § 2072(a) (2006).

¹¹ See SUP. CT. R. 44.

cases on the merits—cases, like *Kennedy*, that the Court may have already been briefed on, heard oral arguments for, and rendered decisions on—if the party seeking rehearing petitions the Court within twenty-five days of the Court’s decision.¹²

The US Supreme Court is an appellate court that interprets and determines facts of law as well as presenting questions of federal law including discovery of misrepresentation in the earlier case, or a change in circumstances that compels a second look in order to grant new trials. There is no right to an appeal in front of the Supreme Court, it has discretionary authority, and will only grant writs of certiorari in cases of prominence involving the US Constitution.¹³

Common sense and justice are on the side of plaintiffs that obstruction of justice was committed by Fifth Third Mortgage Company and Fifth Third Bank when the truth is blocked to come out when Malik Cheatam altered government document; when Kendra Wiley presented false affidavit; when Brian P. Moore lied that that the check of \$7,019.22 was not received on April 29, 2015 to cure the default; and when Michelle Fancher testified under oath and lied during the bench trial on August 3, 2016 stating that petitioners called Fifth Third several times after the trial which is absolutely not true.

¹² *Id.* at 44.1 (“Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time.”)

¹³ *Id.*

It is obstruction of justice when Malik Cheatam, Kendra Wiley, and P. Brian Moore defied the subpoena sent to them before the trial on August 3, 2016 in order to give testimony to shed truth concerning the willful foreclosure conducted on May 5, 2015. It is also an obstruction of justice when nine (9) out of 22 trial exhibits were suddenly excluded by the district court even though they were submitted many times before and during the bench trial and surprisingly affirmed by the court of appeals which is very conflicting and is going to be difficult to live with. The pattern of lying to obstruct justice committed by Fifth Third and its associates is an open question of law because a new Supreme Court ruling that casts doubt on the judgment of this case needs a correct interpretation of the new law.

The integrity and totality of evidence must not be taken for granted most especially if they are solid evidences that were clearly excluded in order to favor the respondents so that they will not be charged of obstruction of justice even the three witnesses, Malik Cheatam, Kendra Wiley, and P. Brian Moore were ordered to appear in trial but instead had chosen to defy the subpoena pursuant to 18 U.S.C. § 1509 (obstruction of court orders).¹⁴ There are enough evidences to convict Fifth Third Mortgage Company and its associates of obstruction of justice into potential misconduct if and only if when the Petition for Rehearing will be granted. Besides an alleged obstruction of justice committed by Fifth Third, an allegation that the lower court misapplied the law is evident when nine (9) trial exhibits were excluded unreasonably on June 29, 2017, nine (9) months and 26 days after the bench

¹⁴ Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both.

trial was conducted on August 3, 2016 which is obviously a clear error because these trial exhibits were discussed and testified by witnesses during the bench trial.

The Court should grant rehearing in order to give this case a plenary consideration in order to summarily remand for consideration of a new development focusing of the unconstitutionality of the decision concerning obstruction of justice of a new legal development so that petitioners are not deprived of their constitutional right under trial by jury pursuant to Amendment 7 of the Bill of Rights.

Respectfully submitted,

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