

No. 18-6388

In The
Supreme Court of the United
States

RUBY BLACKMON,

Petitioner,

v.

EATON CORPORATION,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit**

**OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

After a trial on the merits, the jury returned a verdict in favor of the Respondent, Eaton Corporation (“Eaton” or “Respondent”). Thereafter, the Petitioner Ruby Blackmon (“Blackmon” or “Petitioner”) moved for a new trial. The district court denied her motion in accordance with controlling laws. Blackmon appealed the case to the Sixth Circuit, which affirmed the district court’s post-trial rulings and denied Blackmon’s request for reconsideration. In this Petition, Blackmon once again claims the district court made erroneous evidentiary rulings, and erroneously denied her Motion for a New Trial. The questions presented in the Petition are:

Should the Court deny certiorari when the issues raised by Blackmon relate to alleged erroneous factual findings and misapplication of a properly stated rule of law?

Should the Court deny certiorari as to the issues Blackmon failed to raise and argue at the district court and/or federal appellate level?

Should the Court deny certiorari because the review sought by Blackmon will not resolve unsettled questions of federal constitutional or statutory law of general interest?

PARTIES TO THE PROCEEDINGS

Ruby Blackmon was the plaintiff at the district court level, the appellant at the court of appeals, and is the Petitioner in this Court.

Eaton Corporation was the defendant at the district court level, the appellee at the court of appeals, and is the Respondent in this Court.

CORPORATE DISCLOSURE STATEMENT

Eaton Corporation is a subsidiary of Eaton Corporation plc, an Irish public limited company whose shares trade on the New York Stock Exchange. There is no publicly owned corporation, not a party to the case, that has a financial interest in the outcome.

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OPINIONS BELOW

The opinion of the court of appeals may be found at *Blackmon v. Eaton Corp.*, No. 16-5266, 2017 WL 8159215 (6th Cir. Oct. 18, 2017). The earlier opinion of the court of appeals may be found at *Blackmon v. Eaton Corp.*, 587 Fed.App'x. 925 (6th Cir. Oct. 16, 2014).

The opinion of the district court may be found at *Blackmon v. Eaton Corp.*, No. 2:11-cv-02850, 2016 WL 447726 (W.D. Tenn., Feb. 4, 2016). The earlier opinion of the district court may be found at *Blackmon v. Eaton Corp.*, No. 2:11-cv-02850, 2013 WL 4750078 (W.D. Tenn., Sept. 3, 2013).

JURISDICTION

The Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Civil Rights Act of 1964 §7, 42 U.S.C. § 2000e *et seq.* (1964).

INTRODUCTION

Petitioner Ruby Blackmon seeks review of questions that would not be properly before this Court on a petition for writ of certiorari. She asks the Court to grant certiorari to review evidentiary rulings of the district court, as well as the district court's denial of Plaintiff's Motion for a New Trial. She then references her appeal of the district court's granting of summary judgment in favor of Eaton, the jury trial that took place after remand, and discusses the merits of her underlying case. Petitioner does not identify any unsettled question of federal constitutional or statutory law of general interest. Instead, she raises claims that were fully adjudicated and reviewed by the United States Court of Appeals for the Sixth Circuit. Blackmon's personal belief that erroneous factual findings were made does not affect the correctness of the district court's ruling, which was appropriately affirmed by the Sixth Circuit. As such, those issues would not properly be before this Court on a petition for a writ of certiorari. Certiorari should be denied.

STATEMENT OF THE CASE

I. Factual background

In accordance with this Court's Rules regarding submission of a brief in opposition to a petition for a writ of certiorari, the following corrections are

provided in response to the misstatements of fact asserted in the Petition¹:

- Blackmon was not discriminated against on the basis of her sex nor was she retaliated against for reporting sexual harassment, as reflected in the jury's verdict following a full trial held in the United States District Court for the Western District of Tennessee, the district court's order denying Blackmon's Motion for a New Trial and the Sixth Circuit Court of Appeals' opinion affirming the district court's ruling. (*See* Pet. App. A)²;
- There was no evidence admitted at trial to support Blackmon's claim that Kimberly Hood's ("Hood") testimony was false, or otherwise should have been excluded. Although Blackmon claims the testimony of other witnesses contradicts Hood's testimony that Blackmon reported sexual harassment once, any contradictions did nothing more than pose a question of credibility for the

¹ Additional corrections are incorporated in the "Reasons for Denying the Writ" section below.

² Citations to Petitioner's Appendix are referenced as "Pet. App." with the corresponding letter, and specific page number citation where applicable.

jury's determination (*See* Pet. App. A, pp. 4-5);

- Blackmon's reference in her Petition to reporting alleged sexual harassment to "Susan" was not trial evidence and was not included in the issues Blackmon raised in her post-trial motion or appeal to the Sixth Circuit;
- Blackmon was terminated after violating Eaton policies by repeatedly using a racial slur in the workplace, despite being instructed not to do so and in violation of Eaton policies. Although Blackmon claims she did not use the slur (other than when denying she said it), multiple witnesses testified that Blackmon repeatedly used the "N" word, even after specifically being told to stop. The jury reasonably chose to accept the testimony of the other witnesses over Blackmon. The district court and Sixth Circuit reviewed this issue and agreed that ample evidence was available to support the jury's verdict. (*See* Pet. App. A, pp. 3-5). Blackmon's credibility is not an important issue of federal law and does not involve a split of authority in the courts of appeal. Rather, it involves a determination properly made by the jury who listened to Blackmon's trial

testimony and made credibility determinations appropriately;

- Despite Blackmon’s claims in her Petition of various erroneous evidentiary and post-trial rulings at the district court level, she waived many of those issues by failing to raise and argue them before the district court and/or Sixth Circuit Court of Appeals (*See* Pet. App. A, pp. 5-8);
- Blackmon’s Petition includes citations to a declaration she submitted in opposition to summary judgment, before the case was remanded for jury trial. Blackmon’s declaration was not evidence at trial and was not the subject of her post-trial motion or most recent review by the Sixth Circuit Court. (*See* Pet. App. A).

II. Procedural history

On September 28, 2011, Blackmon filed a *pro se*³ Complaint against Eaton Corporation (“Eaton” or “Respondent”) in the United States District Court for the Western District of Tennessee, alleging sexual harassment and retaliation under the Civil Rights Act of 1964 §7, 42 U.S.C. §2000e *et seq.* (1964). Eaton filed its Answer on December 14, 2011 denying all allegations of wrongdoing. On October 1, 2012, Eaton moved for summary judgment. On June 6, 2013, the

³ Blackmon subsequently retained counsel who represented her at trial and during both appeals to the Sixth Circuit Court of Appeals.

Magistrate Judge issued a Report and Recommendation that Eaton's Motion for Summary Judgment be granted. (*See* Pet. App. H). On September 3, 2013, the district court issued an Order Adopting the Report and granting summary judgment. (*See* Pet. App. G).

On appeal of the district court's granting of summary judgment, the Sixth Circuit Court of Appeals remanded the matter for a jury trial. (*See* Pet. App. E). A jury trial took place beginning September 29 and concluded on October 5, 2015. The trial resulted in a defense verdict on all counts. (*See* Pet. App. D).

On November 2, 2015 Blackmon filed a Motion for a New Trial and/or Judgment Notwithstanding the Verdict. An Order denying Blackmon's Motion for a New Trial was entered on February 4, 2016. *See Blackmon v. Eaton Corp.*, No. 2:11-cv-02850, 2016 WL 447726 (W.D. Tenn., Feb. 4, 2016). On March 7, 2016, Blackmon again appealed the case to the Sixth Circuit Court of Appeals, and the Sixth Circuit Affirmed the Trial Verdict on October 18, 2017. (*See* Pet. App. A). Thereafter, on November 16, 2017, Blackmon filed a Motion for Rehearing. The Sixth Circuit denied the request finding that it did not misapprehend or overlook any point of law or fact when issuing its opinion. (*See* Pet. App. B).

Blackmon then filed a petition for writ of certiorari with this Court on May 14, 2018. Apparently, Blackmon filed numerous versions. Eaton

Corporation received a copy of Blackmon's Petition dated July 13, 2018 and responds to it herein.

REASONS FOR DENYING THE WRIT

The Petition for a Writ of Certiorari should be denied because Blackmon fails to assert any compelling reason for granting a writ. U.S. Sup. Ct. R. 10. Blackmon's Petition does not identify any: (1) conflicting decisions of law; or (2) an important question of federal law that has not been, but should be settled by this Court. *Id.* Instead, Blackmon simply asserts her own unsupported personal opinion that the United States District Court for the Western District of Tennessee made erroneous evidentiary rulings and erred when denying her Motion for a New Trial. These issues were fully adjudicated and reviewed by the United States Court of Appeals for the Sixth Circuit. The Petition does nothing more than re-argue the merits of Blackmon's underlying claims, while asserting erroneous factual findings or misapplication of law by the lower court. As specifically outlined by this Court's rules, the claims underlying Blackmon's Petition for a Writ of Certiorari are not the type this Court typically reviews. U.S. Sup. Ct. R. 10.

As more specifically discussed below, each of the reasons Blackmon cites in support of her Petition for Writ of Certiorari fail to identify a conflicting decision of law, or an important question of federal law that has not been decided by this Court.

I. Issues Waived on Appeal Because Blackmon did not Timely Object or Argue the Issues Before the Lower Court.

As a preliminary matter, the issues presented in Sections B, C, D, and E of Blackmon's Petition were waived. Blackmon did not timely object at the trial court level, and/or she failed to brief the issues when she appealed to the Sixth Circuit. Additionally, these sections of Blackmon's Petition do not identify any conflicting decision of law or an important question of federal law that has not been decided by this Court.

With respect to Sections B and E, Blackmon waived review of the issues because she did not present sufficient argument during her appeal to the Sixth Circuit as to why the district court's decisions to exclude or permit certain testimony was erroneous. (*See* Pet. App. A). More importantly, she fails in this section of her Petition to identify a conflicting decision of law or an important question of federal law that has not been decided by this Court.

Regarding Section C, Blackmon failed at the lower courts and again fails in her Petition to identify any specific portion of Darrel Tetlow's ("Tetlow") or Hood's testimony that allegedly was false. Notably, Blackmon concedes she may not be able to prove any of the witnesses committed perjury. She essentially is asking this Court to embark on a scavenger hunt for factual evidence that might support her claim. The district court and Sixth Circuit both reviewed this issue and correctly determined that no record

evidence supporting Blackmon's claim that Hood or Tetlow provided false testimony exists. (*See* Pet. App. A, pp. 7-8). At best, any witness testimony that contradicted Hood or Tetlow presented nothing more than a credibility question for the jury. The unauthenticated document (that Blackmon chose not to ask Hood about during Hood's deposition and which her Petition references to suggest Hood provided false testimony) properly was excluded from evidence by the trial court. (*See* Pet. App. A, pp. 7-8). Blackmon's personal opinion that the district court's decision, as well as the Sixth Circuit's affirmation of that decision, was erroneous does not provide grounds for review by this Court. This especially is true when the lower courts' examination of this issue revealed record evidence that contradicts Blackmon's claims of perjury. (*See Id.*). Further, during her appeal to the Sixth Circuit, Blackmon failed to identify the specific trial testimony that allegedly was false, and also failed to sufficiently argue the issue, resulting in the Sixth Circuit correctly finding that Blackmon waived this issue on appeal. It should not be reviewed again now. (*See* Pet. App. A, pp. 7-8).

Moreover, Section C of Blackmon's Petition fails to identify a conflicting decision or an important question of federal law that has not been decided by this Court. Instead, Blackmon provides her personal opinion about the lower courts' rulings, as well as the trial witnesses' testimony. Section C of Blackmon's Petition does not provide sufficient grounds for review by this Court.

As for Section D, Blackmon waived this issue too. She failed to object at trial about the alleged sleeping juror(s). (*See* Pet. App. A, p. 8). Blackmon concedes the record is devoid of any mention of sleeping jurors and she presents no legal authority or argument to support review by this Court based solely on her post-trial claims of sleeping jurors. Nor does she identify in Section D a conflicting decision or an important question of federal law that has not been decided by this Court.

II. Questions of Fact Decided by the Jury.

The issue presented in Sections A and B of Blackmon's Petition presents inextricably fact-bound questions that would require this Court to examine the trial evidence and overturn factual findings of the jury. Blackmon asserts the jury verdict was contrary to the weight of the evidence. The alleged testimony Blackmon refers to in support of her argument is nonexistent or misstated. Specifically, the following assertions in Blackmon's Petition are not contained in the record evidence or are misstated in Blackmon's Petition:

- Peggins did not testify at trial that he “knew of the plan by management to engage in sexual harassment of Blackmon for purpose of locating a cell phone that she had in her breast area.” (Pet., p. 15). Rather, Peggins testified, outside the presence of the jury, that it was his belief Eaton's management planned to “push out” Blackmon, as well

as other employees for a variety of alleged reasons. (See Pet. App. A, pp. 4-6). With regard to Blackmon, Peggins testified management had received complaints from other employees about Blackmon, and for that reason she was placed on “the list” of employees the company planned to “push out.” (See *Id.*).

- The trial court did not instruct the jury that Blackmon would be unable to establish a claim for sexual harassment if Tetlow only looked at Blackmon’s chest for purposes of finding a cellphone. (Pet., p. 17). Rather, the trial court explained in its Order Denying Plaintiff’s Motion for New Trial that there was an abundance of evidence permitting the jury to reasonably determine that: 1) Tetlow did not stare at Blackmon’s chest in a sexual manner; and 2) the conduct did not objectively rise to the level of severe or pervasive harassment. See *Blackmon v. Eaton Corp.*, No. 2:11-cv-02850, 2016 WL 447726, at *4 (W.D. Tenn. Feb. 4, 2016).

Moreover, Blackmon fails to show that the verdict was against the clear weight of the evidence because there was ample testimony at trial to refute Blackmon’s allegations. (See Pet. App. A, pp. 4-5). The alleged harasser (Tetlow) testified at trial and denied all allegations of misconduct. (*Id.* at p. 3). Several of

Blackmon's former coworkers testified at trial and denied witnessing any of the alleged misconduct. (*See Id.*).

Section A and B of Blackmon's Petition do not set forth an issue that properly should be reviewed by this Court.

III. Evidentiary Rulings at the Trial Court Level

The issue presented in Section F of Blackmon's Petition relates to one of the district court's evidentiary rulings during trial. Specifically, Blackmon claims excluding the rebuttal testimony of Peggins as unfairly prejudicial was improper. Again, this issue was fully adjudicated and reviewed by the Sixth Circuit. (*See* Pet. App. A, pp. 5-6). Blackmon's Petition presents nothing new that warrants review by this Court. Much like the other issues she raises in her Petition, there is not even a suggestion of conflicting decisions of law, or an important question of federal law that has not been decided by this Court. Rather, Blackmon's Petition merely takes issue with the district court exercising its broad discretion when, pursuant to Rule 403 of the Federal Rules of Evidence, it excluded the testimony of Peggins as unfairly prejudicial. This issue was appropriately reviewed by the Sixth Circuit. (*See Id.*).

CONCLUSION

None of the issue raised by Blackmon warrant this Court's review. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted this 19th day of November, 2018.

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