

NO. 18-8452

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

IN: RE HAROLD BERNARD MASON

HAROLD BERNARD MASON

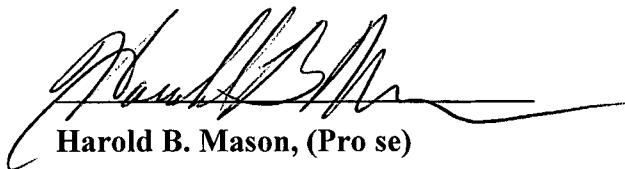
Petitioner,

v.

Vickie Churchman
Flint RiverQuarium Inc., et. al.,

Defendant(s),

Petition of Rehearing of
Writ of Mandamus to the
United States Supreme Court



Harold B. Mason, (Pro se)



5/29/2019
Date

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CERTIFICATE OF GOOD FAITH

Plaintiff hereby certifies that this Petition for Rehearing is restricted to grounds specified in Rule 44 of the Rules of the Supreme Court and is presented in good faith and not for delay.

CERTIFICATE OF INTERVENING AND CONTROLLING CIRCUMSTANCES

Whereas the matter is limited to controlling intervening circumstances.

- i. Whereby the Courts failure to review as spoliation of evidence did in fact directly affect the decision of petitioners claim and has consequential affects.
- ii. Plaintiff hereby certifies that this Petition for Rehearing is restricted to grounds specified in Rule 44 and grounds for Remand, Rules of the Supreme Court and is presented in good faith and not for delay to examine **Federal Rule of Civil Procedure 37(e)**

FEDERAL QUESTION

Does the U.S. Supreme Court have a duty to remand cases back to the U.S. District Court or origin when it is found that all matters were not decided on the merits of their submissions and if so are they to be reviewed from inception or the present case as submitted thereof:

2016 US Code - Title 28 - Judiciary and Judicial Procedure (28 U.S.C. § 2403(b) (2016))

Federal Rule of Civil Procedure 37(e) is applicable there of Court decisions that requires prosecutors/defendants to provide favorable evidence to the defense/plaintiff makes both rule and case applicable Due Process and Equal Protection

JURISDICTIONAL STATEMENT

This court jurisdiction is invoked upon Article III and Amendment VI of the U.S. Constitution Federal Statute U.S.C. 28-1331 thereof U. S. Supreme Court Rule 44 – 28 U.S.C. 2403(b) (2016) may apply

TABLE OF AUTHORITIES -

Constitutional Law/Statute:

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|--|-----------|
| U.S. Constitution, Amend. XIV sec.1 | Pg. i & 2 |
| U.S. Constitution Article III sec. 2 | Pg. i |
| U.S. Constitution Amendment VI | Pg. |

Federal Law/Statute:

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|--|-----------|
| U.S. Supreme Court Rule 44 | Pg. i |
| Federal Rule of Civil Procedure U.S.C. 28-1331 | Pg. i |
| Federal Rule of Civil Procedure 37(e) | Pg. i & 1 |
| 2016 US Code - Title 28 - Judiciary and Judicial Procedure (28 U.S.C. § 2403(b) (2016) | Pg. i |

Local Law/Statute:

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|---|----------------------|
| 2014 Georgia Code -Title 24 - EVIDENCE | |
| Chapter 13 - SECURING ATTENDANCE OF WITNESSES AND PRODUCTION AND | |
| PRESERVATION OF EVIDENCE | Pg. 1 & 2 |

CASES CITED-

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| <i>United States v. Bagley</i> , <u>473 U. S. 667</u> , 676 (1985) | Pg. 1 |
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| <i>Kyles</i> , 514 U. S., at 438. See <i>id.</i> , at 437 | Pg. 1 |
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| May v. Moore, 424 So.2d 596, 603 (Ala.1982); Wal-Mart Stores, Inc. v. Goodman, 789 So.2d 166, 176 (Ala.2000) | Pg. 2 |
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| Brookshire Brothers Ltd v. Aldridge | Pg. 3 |
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NOTE: Other cases of spoliation of evidence is attached herewith although not used in direct illustration/citation with this matter but relevant case law. Pgs iii-iv

SPOLIATION OF EVIDENCE CASES FROM GEORGIA AND OTHER FROM OTHER DISTRICTS

Sanctions: Having researched the matter and cross checked plaintiff has presents that some courts look at, paraphrasing:

- whether the party seeking sanctions was prejudiced as a result of the destruction of evidence;
- whether the prejudice could be cured;
- the practical importance of evidence;
- whether the party that destroyed the evidence acted in good or bad faith; and
- the potential for abuse of expert testimony about the evidence was not excluded.

Bridgestone/Firestone North Am. Tire, L.L.C. v. Campbell, 574 S.E.2d 923, 926 (Ga. Ct. App. 2002); Chapman, 469 S.E.2d at 785.

1. Hulsey v. Dept. of Transp., 230 Ga.App. 763, 498 S.E.2d 122 (1998).
2. Atlanta Coca-Cola Bottling Co. v. Jones, 236 Ga. 448, 451, 224 S.E.2d 25 (1976).
3. Johnson v. Curenton, 127 Ga.App. 687, 195 S.E.2d 279 (1972).
4. Sharpnack v. Hofffinger Indus., 231 Ga.App. 829, 830, 499 S.E.2d 363 (1998).
5. Atlanta Newspapers v. Grimes, 216 Ga. 74, 79, 114 S.E.2d 421 (1960).
6. Young v. Champion, 142 Ga.App. 687, 690-691(2), 236 S.E.2d 783 (1977).
7. Chapman v. Auto Owners Ins. Co., 220 Ga.App. 539, 469 S.E.2d 783 (1996).
8. Headley v. Chrysler Motor Corp., 141 F.R.D. 362 (D.Mass.1991).
9. Northern Assurance Co. v. Ware, 145 F.R.D. 281, 283-284 (D.Me.1993).

10. Sedrati v. Allstate Life Ins. Co., 185 F.R.D. 388 (M.D.Ga.1998) (exclusion of expert testimony about evidence which had been destroyed ensured fairness at trial).
11. Schmid v. Milwaukee Elec. Tool Corp., 13 F.3d 76 (3rd Cir.1994) (jury charge on spoliation more appropriate remedy than exclusion of expert).
12. Howell v. Maytag, 168 F.R.D. 502 (M.D.Pa. 1996) (more severe sanctions of dismissal or exclusion of evidence were not appropriate).
13. Unigard Security Ins. Co. v. Lakewood Engineering &c. Corp., 982 F.2d 363 (9th Cir.1992).
14. Ray v. Ford Motor Co., 237 Ga.App. 316, 317(1), 514 S.E.2d 227 (1999).

OTHER FROM OTHER DISTRICTS IN PART

Utica Mut. Ins. Co. v. Berkoski Oil Co., 58 A.D.3d 717, 718 (2d Dept. 2009) (citation and quotation marks omitted); Mendez v. La Guacatala, Inc., 95 A.D.3d 1084, 1085 (2d Dept. 2012).

Voom HD Holdings LLC v. Echostar Satellite L.L.C., 93 A.D.3d 33, 45 (1st Dept. 2012) (quoting Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 220 (S.D.N.Y. 2003); Pegasus Aviation I, Inc. v. Varig Logistica S.A., 26 N.Y.3d 543, 547-48 (2015

Conderman v Rochester Gas & Elec. Corp., 262 AD2d 1068 (4th Dept. 1999); Gogos v. Modell's Sporting Goods, Inc., 87 A.D.3d 248 (1st Dept. 2011)

Ferrara Bros. Bldg. Materials Corp. & Best Concrete Mix Corp. v. FMC Constr. LLC, 2016 N.Y. Slip Op. 26362 (Sup. Ct. Queens Co. 2016)

STATEMENT OF REHEARING

Plaintiff respectfully files for a rehearing in the matter of Mason vs. Vickie Churchman, Flint RiverQuarium Inc., et. al., pursuant to Rule 44 with it noted that this court's decision is an intervention and controlling effect for remand and concludes that all defendants decisions are subject to review in the federal courts by certiorari as submitted in this instance, the Petition for Mandamus/Rehearing for remand back to the U.S. Middle District Court – where subject matter jurisdiction is not lacking, a protected right thereof Amendment XIV Due Process as well **2014 Georgia Code -Title 24 – Evidence - Chapter 13 - Securing Attendance of Witness and Production and Preservation of Evidence**

I.

A constitutionally intolerable bias exists, as attorney C. Jason Wilcox, is not held to the same standards of sanctions that's been applied to plaintiff, Harold B. Mason

This in fact violates Equal Protection under the Law and should be reviewed on its merits as a matter of procedure and Constitutionally protected right thereof **Amendment XIV Due Process and Equal Protection, Federal Rule of Civil Procedure 37(e)**

II.

The matter is historically rooted in discrimination based upon the merits of the case. It has now become rooted in procedural addressment with misconduct during Discovery being the primary reason for Remand to dispose of the Sanction thereof **Federal Rule of Civil Procedure 37(e)**

III.

It is stated in "***United States v. Bagley, 473 U. S. 667, 676 (1985)***", and the fact that the act of, "Brady suppression occurs when the government fails to turn over even evidence that is "known only to police investigators and not to the prosecutor,"

With that stated, there is an interest in the rule's enforcement of spoliation of evidence, because it does in fact violate procedures of Discovery rules and statutes of both state and federal law. Segueing into the controlling and intervening subject matter as known, according to this court ruling in' *Kyles*, 514 U. S., at 438. See *id.*, at 437", on material evidence being accepted.

REASONS REHEARING AND REMAND SHOULD BE GRANTED

Such procedural duties to enforce spoliation of evidence as a Discovery violation would be within the confines of both Article VI and Amendment XIV of the U. S. Constitution litigant rights on how court matters are filed unequivocally –

Mason produced his complaints and are an integral part of his claims of spoliation of evidence as a legitimate view of "**May v. Moore, 424 So.2d 596, 603 (Ala.1982); Wal-Mart Stores, Inc. v. Goodman, 789 So.2d 166, 176 (Ala.2000).**"

Where the production of valid receipts were conveyed as reasonable doubt against theft

" and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- [1] The Court has requested records but did not review the records on their merits
- [2] The Court has NOT requested records, so it could/can not rule on the merits of the matter
- [3] The Court did not dispose of the matter as whole declaring them to be moot when evidence clearly shows otherwise, in particular the spoliation of evidence and failure to review for such absence of evidence or failure to preserve and/or document by the defendants, clearly a rule of Georgia law, citing "**Georgia Code -Title 24 – Evidence - Chapter 13 - Securing Attendance of Witness and Production and Preservation of Evidence**"

The matter has been seriously flawed because of this dual influence and in need of direction and has been in dire need of instruction and oversight at outset based upon the dual influence. This has in turn resulted in deprivation of rights without due process of law, deeply affecting the merits being heard by absolute due process of the law.

CONCLUSION

Rehearing and remand should be granted to inflect secure procedural review in remand to determine the merits of matters not review in particular being of timely filing in the courts as a matter of law and not merely interpretation –

The U.S. Middle District of Georgia Federal Court –Judge Sands, had a duty to insure that proper Discovery had been done and review if reasonable knowledge of missing, destroyed or failure to maintain evidence, be it maliciously negligently had occurred. Citing,
“Brookshire Brothers Ltd v. Aldridge”

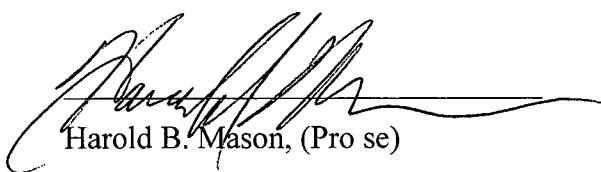
This court’s essential role is to establish uniform standards of rules and law that inherently are the guideline nationally that the court must grant rehearing for Remand to obtain full disclosure.

Proof of Service

I, Harold B. Mason hereby certify that on May 31st, 2019, mailed an original to the known address of the listed defendant(s) attorneys noted below.

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