

Case Number 18-8859

IN THE

SUPREME Court OF THE UNITED STATES

LASHUNDA R BORDEN

VS

CHEAHHA REGIONAL MENTAL HEALTH CENTER INC

APPELLANT RESPONSE TO DEFENDANTS BRIEF

11th CIRCUIT

LASHUNDA BORDEN

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Lashunda R Borden

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1. Alabama Law of Evidence. Joseph A. Colquitt. KFA 540 C6 1990 c.2

2. Federal Rules Of Evidence Manual Ninth Edition. Volume 6 Stephen A Saltzburg KF 8935 s2

2006

3. § 4.2 Rule of Admissibility

Cases

1. Banner Welder Inc. Knighton 425 So. 2d 441 (Ala 1982) where the physical evidence contains objectionable matter that cannot be Separated from admissible portion, entire item may be received in Evidence.
2. Fountain v Phillips, 439 So 2d. 59(Ala. 1983) *Relevant evidence to be admissible, must have some tendency to shed light on issue in Controversy)*

Plaintiff Response to Defendants statement of the Case

I dispute this statement. the defendant and I did indeed submit evidentiary materials in district court, but this is not the defendant's original statement. in their brief they argued that my Job description was administrative Support (Exhibit 3 Defendants statement under oath) The defendant fully denied My Job Title, despite my evidence. the final decision was made by the honorable Judge Hopkins, that did state my job title was Consumer clerk.

The Talladega Clinic consisted of three therapist (Mrs. Karen McKinney, Mrs. Bernita Smith and Mrs. Ellye Bernadi, one part-time Psychiatrist (Dr. Stanley) A certified registered Nurse (Mrs. Blandemer), One Registered Nurse Mrs. Pam Martin, One BLS Case manager (Ms. Christina Johnson), Three Case mangers (Ms. Nikki Garrett, Mrs. Kerri McKenzie, and Mr. Maurice Kelly,) and last One Adult In-home Supervisor Mr. Michael Gooden, and a part time Receptionist (Regina Lovern) and I the plaintiff worked one on one with each and every one of them. Not Just one therapist, part time psychiatrist, and Certified Registered Nurse Practitioner like the defendant states.

The duties and responsibilities, general office duties and Team Work provided in the defendant's brief are indeed my job duties as consumer clerk before I was terminated.

Defendants Doc 39at 66-67 I dispute this statement. On the Consumer Clerk Position on the very last page at the bottom there is a statement. the statement reads, that "Job duties are subject to change based on office needs." This statement was explained to me by Human Resources Kathleen Robinson and My Supervisor Karen McKinney that this very statement meant because our center did not have a full-time receptionist that I the plaintiff was to work both positions when the part time receptionist was not there, just like I had been.

I dispute this statement. Summary A-F the defendant has presented was not my consumer clerk job Description nor were they even on the administrative support duties that were given to me for the

B. Failing to properly manage the schedule and rescheduling of Consumer not being seen and treated on a timely basis. I dispute this statement. I the plaintiff do not pretend to be perfect, when you work two jobs there are bound to be a few mistakes, and I admitted to the mistake made. But I properly **Complaints from at least one consumer that Mrs. Borden told them that they could not get an appointment anytime soon.** I dispute this statement. All front desk workers are considered non clinical staff, we cannot make decisions concerning a consumer not being seen. Even though I had the title Consumer Clerk (office Manager) I did not have the authority to tell a consumer they cannot be seen. I have to staff every client with the therapist, After the therapist make the decision, I am to alert the client that is protocol. I have never told a client they cannot be seen.

Failing to alert the professional staff that consumers were in the waiting area, resulting in consumers waiting unnecessarily for an extended period of time and resulting in the professional staff not being utilized to its fullest extent. I dispute this statement. I the plaintiff alerted all professional staff of their client's arrivals. Not all of the professional staff had a phone in their office. Mrs. McKinney my supervisor and therapist did not have a phone line in her office, I personally had to leave my office and Knock on her door, to alert her when clients arrived.

D. Failing and refusing to collect and organize the consumer files for the next day appointments resulting in disruption of the professional staff seeing and treating consumers effectively. I dispute this statement. I did not refuse to collect and organize consumer files. I the plaintiff worked by myself 90% of the time, I was the only one there that could pull the charts. This charge was reported On September 4, 2014 and the morning of my termination December 3, 2014 of my co-worker not me. my supervisor, Mrs. Ellye Bernardi, notice that I was having to come to work early a lot pull clients charts that my co-worker had not pulled the day before, she had a short meeting with me that morning in the file room, because she had notice that this was happening on a regular basis.

The defendant states all of this culminated on Dec, 03,2014 When both Mrs. Atkinson And Mrs. Robinson attempted to call the Talladega office from the Administrative Office and nobody answered the phone. This situation deemed so critical that they both had to leave their office in Sylacauga and drive to the Talladega office to see what was going on. I dispute this statement. This is where my perjury question is based on there are many things that the defendants Mrs. Atkinson And Mrs. Robinson both were not honest about, In this statement, under oath they knowingly and willing lied, in their statement. On December 3,2014 They both called the Talladega center and I the plaintiff talked to both of them twice, before they arrived at the center. This and other accusations are the reason for my perjury Question They both lied to EEC, in my Unemployment hearing, To Judge Virginia, Hopkins of the District Court, 11th Circuit and Now to you the Supreme Court. This is why I am pleading with the court for the opportunity to turn in my recorded evidence that proves that this statement is indeed false.

The defense also states when they arrived at the Talladega Office, they asked Mrs. Borden why she had not been answering the phone. I dispute this statement. when the Executive Director Cindy Atkinson and Kathleen Robinson arrive at the building, they the door to get into the building is locked to where the professional staff works. I had to unlock the door to for them to get in. when they walked in, they did not speak to me, they just march straight to the back-conference room. They were in the building for 20 minutes and had not even said hello to me. They had a meeting with My supervisor Mrs. McKinney. Mrs. McKinney came to my office to ask me to come with her. When I walked into the conference room. They first slid a suspension action form to me, and they accused me of not answering the phone.

The defense states that Given the History of her poor job performance, her failure to improve despite repeated counseling and the events of the day, Mrs. Atkinson, Mrs. Robinson and Karen McKinney jointly decided that they would place Mrs. Borden on Administrative leave. I dispute this statemen. I did not have history of Poor Job Performance, My Yearly Job evaluation that was given to me at the beginning of the year, gave perfect scores. It was given to me and signed off by my supervisor Mrs.

The defendant AF No. 13 After completing the investigation and giving the matter due consideration, Mrs. Atkinson, Mrs. McKinney, and Mrs. Robinson collectively decided that Ms. Borden should be terminated for unprofessional behavior and unprofessional conduct with fellow employees, neglect of duties which may cause psychological harm to consumers, and insubordination as evidence by failure by words or actions to carry out the orders of a supervisor, when such orders is reasonable part of her job duties. On December 17,2014. I dispute this statement. I the plaintiff was accused of unprofessional Behavior and unprofessional conduct with fellow employees, and neglect of duties which may cause psychological harm to consumers, and insubordination I the plaintiff did not have unprofessional behavior and conduct with employee, I did not neglect my duties, and did not cause psychological harm to Consumers. And I am not guilty of insubordination.

A. The vacant position was filled with temporary help provided by a temporary employment agency, until a suitable replacement could be found. Ultimately, Mrs. Atkinson, Mrs. McKinney, and Mrs. Robinson the same decision makers who jointly decided to terminate Ms. Borden decided to fill the position with a black female. I the plaintiff did not know of this until I was alerted by co-worker. This is the message that was sent to me on January 9,2015 Just one month after my termination, (Document7 Text message from Co-worker). I do not Know anything about the replacement. This was not the reason for the charges against the defendant.

The defendants AF No 15 Following her termination Mrs. Borden applied for unemployment benefits, cheaha opposed Ms. Borden's application for Unemployment benefits on the basis that she was terminated for employee misconduct. Based upon the parties submissions the Alabama Department of labor deemed Mrs. Borden ineligible for Employment

evidence that was not properly before the district Court when it ruled upon Cheaha motion for Summary Judgement, including but not limited to the documentation and unsupported allegations in her petition for writ of certiorari, I dispute this statement. I am asking for the court to please deny the defendants request or effort to destroy or take away any evidence or statement from my case.

I the plaintiff have constantly throughout this case have admitted that I have made several mistakes throughout this court case and have apologize repeatedly for this. I admit that I failed to add citations to my brief but I did not fail to refute the false allegations not facts from the defendant. All of my evidence including the evidence that I am praying the Court will allow me to produce have been Known and seen by the defendant in the 11th Circuit Court Appeal. this is not New Information or New Evidence like the defendant states.

Because of my shortcomings in District court some of my first evidence in was stricken by the request of the defendant, but all of it and my recording from September 04,2014 and December 03,2014 was properly addressed and were granted and returned to the case thankfully by the 11th circuit Court. The evidence that I am begging the Court to allow me to produce will indeed support and prove my allegations against the defendant to be true. The 11th Circuit gave me a second chance, that is why I ask of you Your Honor please allow me provide this Evidence, so that I may prove my innocence.

Response to Defendants Summary of Argument

The defense feels that I do not present any legitimate basis to justify the Court Granting. I dispute this statement. I the plaintiff feel I have presented the courts with a substantial amount facts and evidence, to justify the decision made. My understanding the purpose of the Writ to Certiorari is to decided cases presenting issues of importance beyond the particular facts and parties involved, and I feel my case is important Civil rights have been violated. since day one I have been steady in stating that

I the Plaintiff never wanted to do this, On June 14,2016. In District Court, I the Plaintiff and the Defendants Lawyer, Mr. Bolivig Had a meeting with The Honorable Judge Virginia Hopkins Of the District Court. In this meeting I expressed to her that I did not want this to happen, I loved my job, I express I felt that this had just gotten out of hand. She asked Mr. Bolivig if he would go and talk to the defendant, and ask them could we just settle this, she asked the defendants to Give me my Job back with an agreement to never disclose an information to employees, so that we could move Forward. But The defendant Refused (Document 6, 7 emails between plaintiff and defendant). All that I have Ever wanted to do was clear my Name, and restore the years of hard work, that I have accomplished I was working toward my tenure. All of this including the Insults Is Just a distraction by the Defendant to sway your Honor away from the fact that They have not only violated my Civil right, but Committed a federal Crime to do it.

Argument

I the Plaintiff object the defendant statement. I understand that the Courts reads Pro Se litigates liberally and that I have to adequately Brief the issues or they are deemed abandon. But I the appellant did brief my issues correctly, and the 11th Circuit my Evidence also that Is why it was granted approval. Just because the defendant does not like or want to accept the truth about his client is not a reason for the insults and denial of the court's decision. Banner Welders Inc. v knighton 425 So.2d 441(Ala 1982) 'where the physical evidence contains objectionable matter that cannot be separated from Admissible portion, entire item may be received in evidence'.

The defendant states that I did not Address my Evidence correctly in my brief, and I beg the court for forgiveness, I only did what I thought was right. I only wanted the courts to understand, that this case has been going for a long time, And I just want the truth to come out, and I feel my evidence will prove this. §4.2 Rule of Admissibility states that Evidence must be relevant to be Admissible. Direct Evidence of a material fact always is relevant. It Always tends to establish the material facts. And the

Atkinson and Mrs. Robinson did indeed each talk to me twice before they came to the Talladega office. Which contradicts their under-oath statement that They called and no one answered the phone causing them to drive from Sylacauga, to Talladega office to see what was the matter. This is an argument that the defendant based their case on.

2.The First Amendment gives Everyone the right to freedom of speech does that not include me? The remaining months before I was terminated, I experienced an enormous amount to negativity toward me and the things I would say especially when it was concerning religion. I often found myself in meeting with human resources and Executive director where I would have to defend myself concerning religious beliefs. The comment that I made in the meeting on September 4,2014 where I said I was blessed and I will be blessed, it alone landed me in a follow-up meeting with human Resources. I did not mean any harm in things I said. It would be my reaction in defense from the outlandish things that I would be accused from supervisors. of. For example, on Nov 13, 2014 I was brought into a meeting with human resources Mrs. Robinson and Mrs. McKinney accused of trying to overwork my other Supervisor Elliye Bernardi . and bring harm to her unborn baby.my response was I would not do that I was raised better than that my parents are Christians that comment landed me in two follow up meetings with human Resources and the Executive Director.

In this meeting I was reprimanded by the Executive Director stating that my comment was in insult to all employees, that I was saying that my co-workers were not raised right. Which I did not say. No Matter what I said It would always be used against me.

3.Is it Against the Law to Question your supervisors concerning your pay?

my mistakes I lost my case. after the final judgement I was referred by clerk's office to the Eleventh Circuit Court of Appeals. Not giving up the search for a lawyer, I tried again and was told no, by even more lawyers. but I still continued.

In the Eleventh Circuit I pleaded with the courts to restore the evidence taken from My case by the defendants, and to accept new Evidence. The courts agreed and gave permission for it to be carried with the case. and I was given the approval of a rehearing, which bring us where I am today, that is why I ask that question.

The defendant states that I the plaintiff did not assert these issues in the Court below I dispute this statement. Everything that I have stated has been brought up in The District Court and the 11th Circuit Court. The same arguments that I the plaintiff am addressing Now I have been Addressing since 2014. I feel like I did address legitimate reason for the Court granting my Petition. I did argue the 11th Circuit did not argue The District Court decision, the 11th Circuit Only showed me the mistakes I made and how to the Correct them. And granted me a rehearing to do so. I did fail to properly represent myself in the District Court, because I honestly did not Know what I was doing. But I did my best.

I feel Now is the time In the Supreme Court for me to prove my innocence, I am not asking the Court to start from scratch. I am only asking for a second chance to prove my innocence. The defendant Continues to refer to the District Court decision as if the 11th Circuit Court does not exist, The District granted me approval to appeal in the 11th Court it was signed off by Judge Hopkins, and the 11th Court signed off for my approval for a rehearing, so why would I argue with them. This is just a rouge from the defendant to make me look bad in the eyes of the Court I feel The Courts made the Correct decision.

Conclusion