19-279
No.

In the

Supreme Court of the United States

SHIRLEY JN JOHNSON
Petitioner,

v.

NEW DESTINY CHRISTIAN CENTER CHURCH, INC.
a/k/a Paula White Ministries
a/k/a City of Destiny

PAULA MICHELLE MINISTRIES, INC.,
a/k/a Paula White Ministries

PAULA MICHELLE WHITE
a/k/a Paula Michelle Cain
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After a two-day Bench Trial in a malicious prosecution action, the District Court altered video evidence, and ignored other "smoking gun" evidence. After altering the evidence, the District Court misrepresented that Petitioner submitted the altered evidence which was insufficient to prove malice, and therefore denied punitive damages, but awarded *de minimis* compensatory damages. The Eleventh Circuit Court of Appeals affirmed the decision.

Question 1: Whether the Due Process Clause of the Fourteenth Amendment permits a judgment to stand when the Court altered and misrepresented the one piece of evidence that it used to determine that malice was nonexistent; and ignored other "smoking gun" evidence which proved malice and lack of probable cause?

Question 2: Whether filing a fabricated Complaint constitutes malice.

Question 3: Whether advice of counsel defense is valid when Defendants admitted under oath that they knew the allegations in their Complaint were false?

PARTIES

The caption of the case contains all parties to the proceedings.

CORPORATE DISCLOSURE STATEMENT
Pursuant to Rule 29.6

New Destiny Christian Center Church, Inc. is a not for profit corporation. Upon information and belief, it has no parent corporation.

Paula Michelle Ministries, Inc. is a dissolved not for profit corporation., whose assets were transferred to New Destiny Christian Center Church, Inc. upon dissolution.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Eleventh Circuit Court of Appeals – Case No. 18-13940.

OPINIONS AND ORDERS BELOW

- Eleventh Circuit's unpublished opinion, per curiam, affirming the District Court's decision is not reported, but can be found at--Fed. Appx--2019; 2019 WL 2171853 (11th Cir. 5/20/2019).
- District Court's order denying Petitioner's Rule 52(b) motion is not reported—(slip copy) found at 2018 WL 8139242 (M.D. Fla. 08/29/2018).
- District Court's memorandum opinion and order denying punitive damages is reported at 318 F. Supp. 3d 1328 (M.D. Fla. 07/31/2018).

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254 (1). Pursuant to Rule 13, Petitioner timely filed this Petition for a Writ of Certiorari within ninety (90) days of the Eleventh Circuit's unpublished opinion filed on May 20, 2019, Case No. 18-13940.

The Eleventh Circuit had Jurisdiction under 28 U.S.C. § 1291. The District Court had original jurisdiction based on Diversity of Citizenship – 28 U.S.C. §1331; Federal Question – 28 U.S.C. §1332 (a)(1) and (c)(1); Supplemental Authority – 28 U.S.C. §1367(a).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, CANONS INVOLVED

- The **Due Process Clause of the Fourteenth Amendment** provides that citizens

are entitled to a fair trial in a fair tribunal before a fair decisionmaker. *Caperton v. A.T. Massey Coal Company, Inc.*, 556 U.S. 868, *876 (2009) (quoting *In re Murchison,* 349 US 133, *136 (1955)), "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.' "

- **28 U.S.C. § 455 (a) & (b)(1):**

  (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceedings in which his impartiality might reasonably be questioned.

  (b) He shall disqualify himself in the following circumstances:

  (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Other relevant statutes, rules, canons are reprinted in the appendix to this petition.

STATEMENT OF THE CASE

A. Underlying Copyright Infringement Action

In 2012, Respondents started submitting false DMCA takedown notifications to You Tube regarding videos posted on Petitioner's You Tube channel. On October 7, 2013, Respondents sent Petitioner a Cease and Desist letter. Six days later, on October 13, 2012, Ms. White publicly stated that she was in a battle which she would win because the fight was fixed. Ms. White threatened to inflict damage to, and become a menace to the enemy (Petitioner). Five months later,

in violation of Fed. R. Civ. P. 17(a)(1), on March 27, 2014, using the fictitious name Paula White Ministries, Respondents filed and litigated a fabricated, SLAPP copyright infringement complaint against Petitioner – Case No. 6:14-cv-00497-Orl-GAP-DAB – *Paula White Ministries v. Shirley Jn Johnson.* The criminal allegations of copyright infringement in their Complaint were copied verbatim (even the typos) from Case No. 6:14-cv-00337-Orl-GAP-KRS – *BWP Media USA, Inc. dba Pacific Coast News v. All Access Fans Inc.* Respondents falsely claimed that Petitioner copied and sold their copyrighted videos and photos on her website, and profited from the sale thereof. Five times in the Complaint, Respondents claimed substantial damage. Their prayer for relief requested $150,000 per infringement totaling over $16 million. Respondents did not present *any* evidence to substantiate their false claims.

The Copyright Infringement Complaint was filed as a personal vendetta of Ms. White.

After Petitioner filed a motion for summary judgment, Respondents abandoned their claims and filed a motion to dismiss without prejudice. The Court denied their motion and directed Respondents to either answer the motion for summary judgment or file a motion to dismiss with prejudice. Respondents filed a second motion to dismiss with prejudice. The Court attached *res judicata* to its order concerning Respondents' claims against Petitioner, and advised that if Petitioner wished to seek affirmative relief, she may do so by filing a malicious prosecution claim.

B. Malicious Prosecution Action

Petitioner filed her Verified Malicious Prosecution

Complaint on October 8, 2015. Case No. 6:15-cv-1698-Orl-RBD-TBS – *Shirley Jn Johnson v. New Destiny Christian Center Church, Inc., et al.*

During the course of the proceedings, both Petitioner and Respondents filed motions for summary judgment, which were never decided.

Respondents were held in contempt of Court for disobeying *"all"* the Court's orders, and due to discovery violations; *de minimis* sanctions were applied. Petitioner also filed a Rule 37(d) Motion for Default Judgment against Respondents, which the District Court granted in part. Respondents' Answer and Affirmative Defenses were stricken. A two-day Bench Trial on damages followed. At the close of trial, Judge Dalton directed the Parties to file Proposed Findings of Fact and Conclusions of Law – which we did.

Subsequently, Judge Dalton entered his Memorandum Opinion and Order on July 31, 2018 (Appx. C), awarding minimal compensatory damages, and denying punitive damages, due to insufficient evidence proving malice, wanton disregard, or recklessness. Petitioner timely filed a Rule 52(b) Motion on August 10, 2018, which the District Court denied on September 29, 2018 (Appx. B).

Thereafter, Petitioner timely filed an appeal with the Eleventh Circuit which affirmed per curiam, the District Court's decision. This petition followed.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit Court of Appeals Panel abdicated their responsibility to correct a manifest injustice, and have condoned judicial misconduct – violating 28 U.S.C. § 453.

> The Florida District Court, and the Eleventh Circuit Court of Appeals have permitted themselves to become instruments of manifest injustice, contrary to the basic principles of American law. In *U.S. v. Bethlehem Steel Corp.*, 315 U.S. 289, *326, (1942), dissenting Justice Frankfurter asked, "is there any principle which is more familiar or more firmly embedded in the history of Anglo-American Law than the basic doctrine that the courts will not permit themselves to be used as instruments of inequity and injustice."

In violation of Federal Statute 28 U.S.C. § 453, Florida Middle District Judge Roy B. Dalton, Jr., and the Eleventh Circuit Court of Appeals Panel (Judge Gerald Bard Tjoflat, Judge Adalberto Jordan, and Judge Elizabeth L. Branch) were not faithful to the Oath which they took when rendering their decisions.

28 U.S.C. § 453 states:

> "I, _____ do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

Justice was not administered in this case.

A. The Eleventh Circuit Court of Appeals Panel improperly affirmed the District Court's decision denying punitive

damages in a malicious prosecution action - Judge Dalton violated 28 U.S.C. § 1503 (Chapter 73), and the Due Process Clause of the Fourteenth Amendment.

After a two-day Bench trial, the Florida Middle District Court, and District Judge Roy B. Dalton, Jr. joined with a multimillion-dollar megachurch corporation, and its multi-millionaire pastor, and spiritual advisor to the President of the United States against a single individual, and engaged in obstruction of the due administration of justice – violating 18 U.S.C. §1503 – by altering video evidence, and ignoring or disregarding other "smoking gun" evidence, thereby preventing Petitioner from proving malice, wanton disregard, recklessness, and lack of probable cause.

This also violates the Due Process Clause of the Fourteenth Amendment, which provides that every individual has a right to a fair trial in a fair tribunal. *Caperton v. A.T. Massey Coal Company, Inc.*, 556 U.S. 868, *876 (2009) (quoting *In re Murchison,* 349 US 133, *136 (1955).

Judge Dalton – in his Memorandum Opinion and Order – misrepresented that Petitioner submitted the Court-altered evidence which was insufficient to prove malice, and therefore denied punitive damages, but awarded *de minimis* compensatory damages. The Eleventh Circuit Court of Appeals blindly affirmed the decision.

In *Jaffee v. Redmond*, 518 US 1,*19 (1996), regarding the exclusion of evidence, dissenting, Justice Scalia and The Chief Justice stated:

"For the rule proposed here, *the victim is more*

> *likely to be some individual who is prevented from proving a valid claim* – or (worse still) prevented from establishing a valid defense. The latter is particularly unpalatable for those who love justice, because *it causes the Courts of law not merely to let stand a wrong, but to become themselves the instruments of wrong.*" [emphasis added].

"The primary function of trial court proceedings is to find the truth, i.e. the true facts, in disputes between man and his neighbor and man and his government, in order that the applicable law may be applied thereto so as to reach a just conclusion." *Dodd v. The Florida Bar*, 118 So. 2d 17, *19 (Fla. 1960).

The lower Courts applied negligence caselaw which is inapplicable to a malicious prosecution action, which is an intentional tort; and therefore arrived at an unjust conclusion.

Due to bias and prejudice, Judge Dalton attempted to hide the truth to protect the multimillion-dollar Respondents, and the Eleventh Circuit Court of Appeals condoned this misconduct.

In its unpublished opinion, (Appx. A), the Eleventh Circuit Panel made no mention of the altered video evidence, even though the alteration was plainly laid out in Petitioner's Reply[2]. (Appx. D, pp. 44a-50a, and the video evidence was in the Panel's possession.

The Eleventh Circuit Panel also ignored the following crucial evidence which would prove Petitioner's claim, and change the outcome of the decision:

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[2] Highlighting has been replaced with bold type.

- Respondents' sworn answers admitting that they did *not* see: their videos and photographs offered for sale on Petitioner's website and You Tube channel, paid advertisements, technology for forwarding their videos and photos to Facebook Twitter, and Instagram.
- The Copyright Infringement Complaint from which Respondents' criminal allegations of copyright infringement were copied verbatim.
- Trial testimony of Mr. Knight, PWM's general manager (vice president) testifying under oath that he *knew* Petitioner's You Tube channel did not contain ads, and was not commercialized or monetized. (Record Transcript, Doc. 257. pp. 29:13-23; 39:13-16.
- Trial testimony of Respondents' own expert witness testifying that he saw no signs of commercialization on Petitioner's website or You Tube channel, nor did he see any photographs. (Record Transcript, Doc. 257, pp 64:4-5; 59:9-20).

B. The Eleventh Circuit Panel improperly reviewed for abuse of discretion – rather than de novo – the Trial Judge's determination that probable cause existed, which is inconsistent with this Court.

The District Court decided, and the Eleventh

Circuit Panel affirmed that probable cause existed because Respondents relied on the advice of their counsel in bringing the copyright infringement action.

However, the Panel performed a review for abuse of discretion, which is inconsistent with this Court in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* 532 U.S. 424, *436, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001) (citing *Ornelas v. United States*, 517 U.S. 690, 697 (1996)) stating that: Likewise, in *Ornelas*, we held that trial judges' determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal". The Court also stated, "'... *de novo* review tends to unify precedent' and 'stabilize the law.'" [italics in original].

In, reaching the conclusion that probable cause existed, the District Court, and the Eleventh Circuit Panel turned a blind eye to "smoking gun" evidence and, focused only on selected facts and evidence, which is inconsistent with the Eleventh Circuit's prior decision disallowing probable cause to stand for this very reason.

In *Kingsland*, the Court found the officer defendants' report constitutionally deficient to establish probable cause because the officers turned a blind eye to information that was available to them, and chose to focus only upon selected facts. In *Kingsland v. City of Miami*, 382 F. 3d 1220, *1228 (11th Cir. 2004) the Court stated: "We cannot allow a probable cause determination to stand principally on the unsupported statements of interested officers, when *those statements have been challenged and countered by objective evidence.*" [emphasis added].

That Court also stated that, "Appellant argues that

... objectively, officers should not be permitted to turn a blind eye to exculpatory information that is available to them, and instead support their actions on selected facts they chose to focus upon. We agree."

C. The Eleventh Circuit Panel improperly affirmed the District Court's biased decision that Respondents relied in good faith on the advice of counsel.

When asked if they made a full and fair disclosure of all material facts to their attorney before filing the copyright infringement complaint, Respondents improperly invoked the attorney-client privilege. (Appx. G, p.84, #2). The District Court's, and the Panel's decisions are inconsistent with Supreme Court binding caselaw. In *Upjohn Co. v. United States, 449 U.S.* 383, *395 [6], *396 (1981) (quoting *Philadelphia v. Westinghouse Electric Corp.*, 205 F. Supp. 830, 831, E. D. Pa (q2.7), this Court held that:

> "[T]he protection of the privilege extends only to *communications* and not to facts. A fact is one thing and a communication concerning the fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communications to his attorney." [italics in original].

Respondents admitted under oath that they hired their attorney to draft the allegations for them according to applicable law. (Appx. G, pp. 84a-85a,

#3). So, their then-attorney, Thomas A. Sadaka simply copied the allegations – even the typographical errors – verbatim from Case No. 6:14-cv-00337-GAP-KRS – *BWP Media USA, Inc. dba Pacific Coast News v. All Access Fans, Inc.* (Appx. I).

More importantly, Respondents admitted under oath that they were aware of the false allegations in their Complaint, (Appx. E, p. 70a, #2; Appx, F, p. 78a, #2;) and did nothing to ensure accuracy, (Appx. F, p. 78a, #3, yet Respondents still authorized their attorney to file the Complaint. Respondents knowingly filed a fabricated Complaint. The District Court, and the Eleventh Circuit Panel turned a blind eye to this direct evidence, which was submitted as joint exhibits 55 and 63; and cited in Petitioner's (Appellant's) appeal brief, and in her Findings of Fact and Conclusions of law.

The Eleventh Circuit Panel has acknowledged that in Diversity cases, Florida law governs substantive issues. However, the District Court's, and the Eleventh Circuit Panel's decisions are also inconsistent with the Supreme Court of Florida in *Dodd v. The Florida Bar,* 118 So. 2d 17, *19 (Fla. 1960) stating that:

> "All persons are charged with equal regard for the truth. An honest layman will seldom if ever perform a dishonest act at the urging of his lawyer and *even if he does he must be held accountable therefor.* If all responsibility for the false acts of the witness or client is allowed to be shifted to "the attorney the. result will be to encourage, not discourage, false testimony. Further it is likely to increase

> the number of situations in which a witness or litigant, when charged with having given false testimony, *seeks to shift the responsibility for his acts to his attorney by claiming that the attorney advised him to testify falsely.* [emphasis added].

This is exactly what the Respondents are doing here. The District Court and the Eleventh Circuit are willfully blind to this fact.

D. The Eleventh Circuit Panel ignored Supreme Court binding caselaw requiring de novo review regarding procedure, and size of punitive damages

The Eleventh Circuit Panel blindly affirmed per curiam, the District Court's judgment awarding $0 in punitive damages, which is grossly inadequate, and is inconsistent with this Court in *Dimick v. Schiedt,* 293 US 474, *486 (1935) stating that "[w]here the verdict ... is palpably and grossly inadequate or excessive, it should not be permitted to stand ... ".

The District Court and the Eleventh Circuit Panel also violated Constitutional procedure regarding punitive damages, and ignored binding Supreme Court caselaw requiring that the appellate review be performed *de novo.* Instead, the Eleventh Circuit Panel reviewed for abuse of discretion.

This Court in *Philip Morris USA v. Williams,* 549 US 346, *353 [4] (2007), held that:

> "...the Constitution imposes certain limits, in respect to both *procedure for awarding punitive damages* and to amounts forbidden as

> 'grossly excessive' See *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S. Ct.2331, 129 L.Ed. 2d 336 (1994) (requiring judicial review of the size of punitive awards); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.* 532 U.S. 424, 443, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001)(*review must be de novo*)" [emphasis added].

Without performing a *de novo* review, it is unlikely that the Eleventh Circuit Panel could have accurately concluded there was insufficient evidence.

E. Respondents abused the judicial process which violates the Due Process Clause of the Fourteenth Amendment.

Respondents instigated the copyright infringement action against Petitioner with malice, and with evil motive and intent. The copyright infringement complaint was brought in retaliation, as a personal vendetta of Ms. White for the improper purpose of harassing, punishing, and extorting millions of dollars from Petitioner. Ms. White was angry because Petitioner's videos were critical of her and her Biblical teachings.

Respondents abused the judicial process in two ways. In *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49, *54 (1993) this Court stated:

> "The Court of Appeals characterized 'sham' litigation as one of two types of 'abuse of ... judicial processes': either "'misrepresentations ... in the adjudicatory process'" or the pursuit of a "'pattern of baseless, repetitive claims'" instituted "'without probable cause, and regardless of the merits.'" 944 F.12d,

> at 529 (quoting *California Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 513, 512, 92 S.Ct. 609, 613, 612, 30 L.Ed. 2d 642 (1972))." [ellipses in original]

Respondents abused the judicial process when they filed and continued the fabricated (sham) copyright infringement complaint.

In *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.* 508 US 49, *60, *61 (1993), this Court defined the second type of abuse of a judicial process as follows:

> "Under this second part of our definition of sham, the court should focus on whether the baseless suit conceals 'an attempt to interfere *directly* with the business relationships of a competitor,' *Noerr*, supra 365 U.S. at 144, 81 S. Ct. at 533, (emphasis added), through the 'use [of] the governmental *process*–as opposed to the *outcome* of that process – as an anticompetitive weapon.' *Omni,* 499 U.S., at 380, 111 S.Ct., at 1354. (emphasis in original)."

Respondents also abused the judicial process after the complaint was filed. Two months into litigation, Respondents submitted false DMCA takedown notifications to You Tube which caused the permanent termination of Petitioners You Tube channel on July 1, 2014 through February 10, 2015.

Respondents expressly requested that You Tube remove the videos "*in lieu of the outcome*" of the case. You Tube did.

F. Legal malice exists under Florida law

In this present case, Respondents' conduct was intentional, willful, wanton and reckless, which constitutes actual malice, warranting punitive damages pursuant to Fla. Stat. §768.73(1)(c), and §768.72(2). However, the Florida Supreme Court stated:

> "We also stated that the element of malice need not be proven directly, but may be implied or inferred from want of probable cause. In other words, it is not necessary to prove Actual malice in order to recover for malicious prosecution; only Legal malice is necessary, and this legal malice may be inferred entirely from a lack of probable cause. An award of punitive damages also requires only proof of legal malice..."

Adams v. Whitfield, 290 So.2d 49, *51 (Fla. 1974).

Florida district courts of appeal are in agreement. In *Durkin v. Davis*, 814 So.2d, 1246, *1248-49, HN [5] (Fla. 2nd DCA 2002) ("Plaintiff suing for malicious prosecution need not allege actual malice; legal malice is sufficient and may be inferred from, among other things, lack of probable cause, gross negligence, or great indifference to persons, property, or the rights of others").

In *Clemons v. State Risk Management Trust Fund*, 870 So. 2d 881,*883 (Fla. 1st DCA 2004) the Court stated:

> "This Court has held that, in seeking punitive damages, '[i]t is not necessary to prove actual malice or intent to cause the particular injury sustained; the requisite malice or evil intent may be inferred from the defendant's having willfully pursued a course of

> action in wanton disregard of the potential harm likely to result as a consequence of that wrongful conduct. *Johns–Manville Sales Corp. v. Janssens*, 463 So.2d 242,247 (Fla.1st DCA 1984")

The *Clemons* Court at *882 also stated:

> "...[T]he Florida Supreme Court has held that '[i]n an action for malicious prosecution it is not necessary for a plaintiff to prove actual malice; legal malice is sufficient and may be inferred from, among other things, a lack of probable cause, gross negligence, or great indifference to persons, property, or the rights of others.' *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1357 (Fla. 1994).

Record evidence proves beyond doubt that Respondents filed the fabricated copyright infringement complaint for an improper purpose, and without probable cause.

Most importantly, the District Court awarded compensatory damages to Petitioner. In *City of Hollywood v. Coley*, 258 So. 2d 828 (Fla. 4th DCA 1971) the Court determined that, " ... the verdict of the jury awarding plaintiff in the instant case compensatory damages for malicious prosecution constitutes a sufficient finding of malice to justify the award of punitive damages."

G. Judge Dalton's judgments were biased and prejudicial. Canons 1, 2, 3 of the Judicial Code of Conduct, and 28 U.S.C. §455(a) and (b)(1) were violated.

Canon 3

At trial Judge Dalton stood and stared at Petitioner with disdain – which violates the Florida Judicial Code of Conduct. Canon 3B(5) Commentary states:

> *A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.*

Canon 2

Also, at trial, Judge Dalton permitted Ms. White to silently mouth to him, which strongly suggests a personal connection between Judge Dalton and Ms. White, and it gives the appearance that Ms. White is in a position to influence the Judge, which violates the Florida Judicial Code of Conduct. Canon 2B states:

> "...A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of the judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. ..."

Judge Dalton violated Canon 2A as well, which

states: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 1:

Judge Dalton did not uphold the integrity and independence of the judiciary.

28 U.S.C. §455 (a) and (b)(1)

In addition to altering evidence on behalf of Respondents, Judge Dalton also assisted the Defense Counsel in presenting his evidence.

Judge Dalton should have recused himself from the case *sua sponte* pursuant to 28 U.S.C. §455 (a) and (b) (1). Also, in *Caperton v. A.T. Massey Coal Company, Inc.,* 556 U.S. 868, *876 (2009) this Court stated that, "[u]nder our precedents there are objective standards that require recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable' *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L.Ed. 2d 712)."

In *Crosby v. State*, 97 So. 2d 181, *184 (Fla. 1957) (quoting *State ex rel Davis v. Parks*, 141 Fla. 516, 194 So. 613, 615), the Florida Supreme Court held that the Judge in that case should have recused himself; the Court stated:

> " 'This Court is committed to the doctrine that *every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is*

> *seriously brought in question. ... If he fails through these avenues to reflect justice and square dealing, his usefulness is destroyed.'* The attitude of the judge and the atmosphere of the court room should indeed be such that no matter what charge is lodged against a litigant or what cause he is called upon to litigate, he can approach the bar with every assurance that he is in a forum where the judicial ermine is everything that it typifies, purity and justice. The *guaranty of a fair and impartial trial* can mean nothing less than this.' We hold that the trial judge should have disqualified himself and declined to proceed further in the case." [emphasis added]

In *In re J.P. Linahan, Inc.,* 138 F. 2d 650, *651 (2d Cir. 1943), Judge Jerome Frank stated: "Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness."

It is of great importance to note the Eleventh Circuit in *U.S. v. White*, 846 F.2d 678, *696 (11th Cir. 1998) stating that "we act with the sensitivity 'that it is not merely of some importance but is of *fundamental* importance that justice should not only be done, but should manifestly and undoubtedly *be seen* to be done.' *Rex v. Sussex Justices* (1924) 1 K. B. 256, 259 (emphasis added)."

A second case which Judge Dalton presided over is pending in the Eleventh Circuit (No. 19-11070). Due to bias and prejudice, Judge Dalton denied Petitioner a trial on the issues of scienter, subjective good faith

belief, advice of counsel, and malice, which violates the Seventh, and Fourteenth Amendments. Judge Dalton misrepresented Petitioner's argument, improperly weighed the evidence, made credibility determinations, agreed with Respondents' version of the facts, then entered summary judgment in favor of Respondents, even though the evidence in that case was so one-sided as to warrant summary judgment in favor of Petitioner. Respondents' own evidence wholly supported Petitioners Claims.

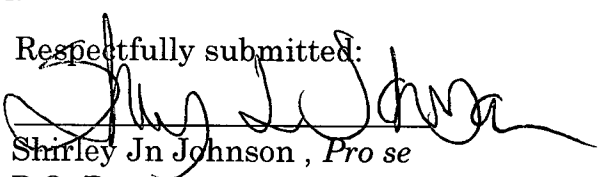
It is evident that Judge Dalton is biased and prejudiced against Petitioner and lacks the ability to render a just and fair decision.

CONCLUSION

Since the Eleventh Circuit Panel abdicated their responsibility to correct a manifest injustice, at this point, the only Court which can correct the injustice, and restore public confidence in the integrity of the Judicial System is the Supreme Court of the United States.

For the reasons stated herein, Shirley Jn Johnson respectfully requests this Court grant her Petition for a Writ of Certiorari.

Respectfully submitted:



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