

Supreme Court, U.S.
FILED

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No. 21-529

In the
Supreme Court of the United States

BATASKI BAILEY., *PRO SE.*,
Petitioner,

v.

FAIR & WALKER UNIT OWNERS ASSOCIATION, INC.;
ACCESS MANAGEMENT GROUP, L.P.; and
EMPIRE PARKING SERVICES, INC.,
Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of Georgia**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do intentional false statements made by an attorney in a judicial proceeding violate the opposing party's Fifth and Fourteenth Amendment rights?
2. Can attorney's fees be awarded to a party for the alleged defamation of any attorney during a legal proceeding if the statements alleged to be defamatory are in fact true?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing both here, and before the Georgia Supreme Court.

The petitioner here, and appellant below is Bataski Bailey, *Pro Se.*

The respondents here, and appellees below are Fair & Walker Unit Owners Association, Inc., Access Management Group, L.P., and Empire Parking Services, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bataski Bailey, Pro Se, respectfully petitions for a writ of certiorari to review the judgment of the Georgia Supreme Court in this case.

OPINIONS BELOW

Georgia Supreme Court (see A);
Court of Appeals of Georgia (see B); and
Fulton County Superior Court of Georgia (see C).

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on May 3, 2021.

This Court's jurisdiction rests on 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States

Constitution provides:

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.

STATUTES INVOLVED

GA R BAR Rule 4-102, RPC Rule 3.3

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

18 U.S.C.A. § 1001 (West)

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

Ga. Code Ann. § 16-10-20 (West)

A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.

GA R BAR Rule 4-102, RPC Rule 8.4

- (a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:
 - (1) violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (2) be convicted of a felony;
 - (3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
 - (4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;
 - (6)(i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;
 - (ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
 - (iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;
 - (7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in *judicio*, the commission of such act.

(b)(1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:

- (i) a guilty plea;
- (ii) a plea of *nolo contendere*;
- (iii) a verdict of guilty; or
- (iv) a verdict of guilty but mentally ill.

(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of *nolo contendere*, a verdict of guilty, or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a)(1), (a)(2) and (a)(3) above.

(d) Rule 8.4(a)(1) does not apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.

The maximum penalty for a violation of Rule 8.4(a)(1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4(a)(2) through (c) is disbarment.

INTRODUCTION AND STATEMENT OF CASE

The principle that is the glue of the United States of America's judicial system is truthfulness by all parties that present statements in a judicial proceeding. Without this truthfulness, the process fails everyone involved especially those for which it was designed to protect. The Fifth and Fourteenth Amendments' both protect a party's right to due process which this Court has determined means a fairness in judicial proceedings. As shown by the recent alleged actions of a few attorneys, when there is a lack

of truthfulness by the very individuals who swore an oath protect and uphold the constitution, it can create a fear by the greater public that the system is not one for the people as the founding fathers intended. The case for which this petitioner petitions this Court for a writ of certiorari highlights how the knowingly intentional statements by an attorney can cause severe harm to the opposing party. When such actions by an attorney are not addressed, admonished, and penalized, the damage can shake the judicial system to its core and lead to an erosion of its basic principles.

B. Factual Background

The instant case originated from a dispute between the Petitioner a townhome owner within the Fair & Walker Community, in Atlanta, Georgia, and Respondents Fair & Walker Unit Owners Association, Access Management Group, and Empire Parking Services. During the course of the litigation and in a judicial proceeding before the Honorable Judge Jane C. Barwick of the Fulton County Superior Court, Attorney Danielle Russell and Attorney Lawrence Domenico both knowingly and intentionally made false statements to the court. Additionally, Attorney Lawrence Domenico knowingly and intentionally made false statements within filings presented to the court and to the Petitioner in the course of litigation. The Petitioner contacted the offending attorneys via email requesting they both correct their false statements in the previous filings as well correct their false statements to the court. The Respondent's responded to the Petitioner by filing their respective summary judgement motions

along with motions for sanctions against the Petitioner for defamation, both of which were granted respectively. The Petitioner was ordered to pay tens of thousands of dollars in attorney's fees as sanctions for describing the attorney's actions as "perjury or perjurious". The Petitioner alerted the court of these false oral and written statements and filings in the form of motion for a new trial using the false statements and direct evidence thereof as the basis for said motion. Despite clear evidence of false statements made by Attorney Danielle Russell and Attorney Lawrence Domenico which directly impacted the Petitioner's right to due process and fairness and on which the court's decision was based, the Petitioner's motion for a new trial was denied. The Petitioner timely filed an appeal with the Court of Appeals of Georgia. The Petitioner's appeal was denied by the Court of Appeals of Georgia with no opinion rendered. The Petitioner timely filed an appeal with the Supreme Court of Georgia. The Petitioner's appeal was denied by the Supreme Court of Georgia with no opinion rendered.

**C. False Statements by Attorney Danielle Russell
and Attorney Lawrence Domenico**

In Respondent Empire Parking Services' Motion for Sanctions, the Respondent's allege the Petitioner defamed Respondent's counsel or otherwise caused harm by indicting to the Respondents through email correspondence, as well as to the court that the Respondent's statements and filings violated laws and were

perjurious. The actions for which the Petitioner was accused was well within the law as available remedies for actions deemed unethical and illegal pursuant to O.C.G.A§ 16-10-70(a): (a) “A person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue or point in question.”

Undisputed Facts:

1. Petitioner Bataski Bailey sent an email to Respondent Empire Parking's counsel Mr. Domenico on December 9, 2018 indicating he had information regarding an Empire Parking employee who was involved in the assault of a citizen. The purpose of this notification was to inform the Respondent the Petitioner believes the person involved was also the person responsible for the illegal booting actions which are the subject of this litigation and his deposition testimony is discoverable.
2. On January 28, 2019 Respondent Empire Parking thorough its counsel Mr. Domenico submitted interrogatories responses indicating they were not aware of any employees involved in any assaults on anyone.

Plaintiff's Request for Interrogatories #7

Please list any and all criminal allegations against defendant EPS or its employees from January 1, 2012 through December 23, 2018.

Defendant Empire Parking Services Response:

None to this Defendant's knowledge.

3. On March 28, 2019 during the deposition of Mr. Schmeelk, CEO of Empire Parking, Mr. Schmeelk indicated he was in fact aware of an alleged assault by an Empire Parking employee and had been aware prior to the filing of the interrogatories Deposition of Chipper Schmeelk CEO of Empire Parking Services' on March 28, 2019

Q. Do you have any employees that are accused of a crime at this time?

MR. DOMENICO: Objection. Is the

modifier at this time meaning current employees, or a pending criminal matter?

MR. BAILEY: Both.

MR. DOMENICO: Objection, vague and multiple parts.

THE WITNESS: Yes.

BY MR. BAILEY:

Q. Who are those employees?

A. It's one that I'm aware of. His name is Alex Bland.

Q. How long have you been aware of Mr. Bland's alleged criminal activity?

A. Shortly after the incident occurred.

Q. When was that?

A. The incident occurred on Thanksgiving morning.

Q. Was that last year?

A. Correct.

Q. So 2018?

A. Correct.

4. On January 28, 2019 Respondent Empire Parking thorough its

counsel Mr. Domenico submitted interrogatories and discovery requests responses indicating they were not in possession of documents or materials responsive to the plaintiff's request for production.

Plaintiff's Request for Interrogatories #4

If you know of the existence of any pictures, photographs, plats, visual recorded images, diagrams or objects relative to the occurrence, the Plaintiff's physical condition, or the scene of the occurrence, identify the substance of such recording and the present custodian of each such item.

Defendant Empire Parking Services' Response:

None

Plaintiff's Request for Production of Document to Defendant Empire Parking Services #5

All pictures, photographs, plats, visual recorded images, and diagrams produced in conjunction with the subject of this litigation.

Defendant Empire Parking Services' Response:

None at this time

5. On March 28, 2019 during the deposition of Mr. Schmeelk, CEO of Empire Parking, Mr. Schmeelk, indicated Empire Parking was in possession of documents and materials requested in the Respondent's Requests for Interrogatories and production of documents and those documents were in fact available to Mr.... Mr....also indicated he was in charge of daily operations of Empire Parking

Deposition of Chipper Schmeelk CEO of Empire Parking Services' on March 28, 2019

Q: Would there be any documents, recordings or pictures of any boots that was placed at 238 Walker Street from the period of January 1, 2015 through December 23, 2018?

A. There should be, yes.

Q. Would you have access to those?

A. We should.

Q. In that same interrogatory that was submitted under documents to be produced, the request was made for those documents.

Number five states, "All pictures, photographs, plats, visual recorded images and diagrams produced in conjunction with the subject of this litigation," a request for documents.

Did you submit those with response to the interrogatories?

A. No.

Q. Why not?

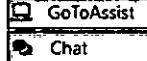
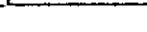
A. I don't know.

6. On March 15, 2019 Petitioner Bataski Bailey sent via email (to all Respondent's counsel), US Mail (to those named in the subpoena) and filed six (6) subpoenas via the trial Court's efile, including one for Mr. Schmeelk, CEO of Empire Parking demanding his presence at a hearing scheduled on March 19, 2019 before the trial Court.

7. On March 18, 2019 at 09:43am Mr. Domenico opened the filed subpoena as shown by the Courts filing and service system.

8. On March 18, 2019 at 09:18am Attorney Adam C. Joffee counsel for Respondents Fair & Walker and Access Management Group

as well as co-counsel to Attorney Danielle Russel also opened the filed subpoenas which include subpoenas to corporate representatives of Respondents Fair & Walker and Access Management Group.

Filing Description
6Subpoenas for March 19, 2019 hearing

Filing Status Accepted	Accepted Date 3/18/2019 8:15 AM EST
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Lead Document

File Name	Description	Security	Download
Notice of Filing Subpoena.pdf	NOTICE OF FILING	Public	Original File Court Copy

eService Details

Status	Name	Firm	Served	Date Opened
Sent	Danielle E. Russell	Goodman McGuffey LLP	Yes	Not Opened
Sent	Danielle E. Russell	Goodman McGuffey LLP	Yes	Not Opened
Sent	Adam C. Joffe	Goodman McGuffey LLP	Yes	Not Opened
Sent	Adam C. Joffe	Goodman McGuffey LLP	Yes	3/18/2019 9:18 AM EST
Sent	Christine A. Spath	Goodman McGuffey Lindsey & Johnson, LLP	Yes	3/18/2019 2:21 PM EST
Sent	Lawrence B. Domenico		Yes	3/18/2019 9:43 AM EST
Sent	Wendy DERILUS-JOSEPH	Pankey & Horlock, LLC	Yes	3/18/2019 8:20 AM EST

9. On March 19, 2019 during the scheduled hearing Ms. Russell (who was flanked by co-counsel Attorney Adam C. Joffee) verbally indicated to the court their client had not been served with a subpoena after articulating to the court the ways in which service of a subpoena could occur including through counsel.

10. Also, on March 19, 2019 during the scheduled hearing Mr. Domenico verbally indicated his client had not been served with a subpoena despite hearing an articulation by Respondent Fair & Walker's counsel Ms. Russell, stating one legal way of subpoena service is through counsel.

Transcripts from March 19, 2019 Motions Hearing before the trial court.

MS. RUSSELL: YES, YOUR HONOR. OBVIOUSLY,
4 O.C.G.A. 24-13-24 GOVERNS THE SERVICE OF
5 SUBPOENAS, YOUR HONOR. I MEAN, IT SAYS A
6 SUBPOENA MAY BE SERVED BY THE SHERIFF, BY
HIS
7 OR HER DEPUTY, OR BY ANY OTHER PERSON NOT
8 LESS THAN 18 YEARS OF AGE. PROOF MAY BE
9 SHOWN BY RETURN OF CERTIFICATE ENDORSED ON
10 A COPY OF THE SUBPOENA. SUBPOENAS MAY ALSO
11 BE SERVED BY REGISTERED OR CERTIFIED MAIL OR
12 STATUTORY OVERNIGHT DELIVERY. IT ALSO SAYS,
13 **SERVICE UPON A PARTY MAY BE MADE BY**
SERVING
14 **HIS OR HER COUNSEL OF RECORD.**

MR. DOMENICO : YOUR HONOR, IF I MAY SPEAK
2 TO THAT. I'M LARRY DOMENICO. I REPRESENT
3 EMPIRE PARKING SERVICES. MY CLIENT IS — MY
4 CLIENT WAS ONE OF THE FOLKS MR. BAILEY HAS
5 SUPPOSEDLY SENT A SUBPOENA TO, BUT MY
CLIENT
6 HAS NOT BEEN SERVED WITH A SUBPOENA SO HE
IS
7 NOT HERE.

As shown by these excerpts from the court's transcripts both counsels for the Respondents knowingly and intentionally made statements to the trial court each knew to be false as shown by the trial Court's e-file service records.

OCGA 9-11-33(2):

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

OCGA 9-11-33(2) requires interrogatories be answered "under oath". In Respondent Empire Parking Service's interrogatories Mr. Lawrence Domenico, counsel for Empire Parking Services does not provide with his interrogatories a statement or affidavit of who is answering these interrogatories thusly certifying that the person answering the interrogatories is doing so based on personal knowledge and while under oath. Because of this lack of affidavit this Court must assume Mr. Domenico is answering these interrogatories based on his personal knowledge as the signer of said interrogatories.

To come close to the threshold necessary for sanctions in a matter such as this, the appellee must first establish the statements made either written or otherwise were not perjurious. In addition,

the appellee must prove the actions by the appellant were meant to harass or otherwise intentionally cause unnecessary harm to the appellees.

Individually these perjurious statements may not rise to the level of action by the court. Collectively however, these perjurious statements represent intentional acts by Respondent Empire Parking Services and its counsel, that is an affront to justice and has deprived the appellant of his right to due process and fairness, including that of discoverable information and documents. The Petitioner was able to show conclusively several instances of perjury by Respondent Empire Parking Services through its counsel Lawrence Domenico. Yet, the trial court completely ignored this indisputable evidence and failed to issue a ruling based on precedent and a lawful finding of fact which justifies such a decision. These failures by the trial court represent intrinsic defects which do not appear on the face of the record or pleadings. These actions by the Respondents directly impacted the Petitioners right to due process as guaranteed by the Fifth and Fourteenth Amendments.

REASONS FOR GRANTING THE PETITION

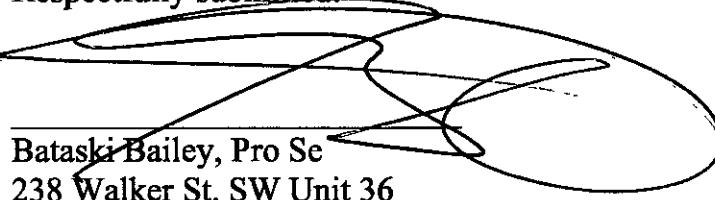
This petition should be granted because of the failure by the Georgia Supreme Court and all lower courts to ensure the Petitioner's right to due process and fairness as assured by the Fifth and Fourteenth Amendments to the Constitution of the United States. This failure has deprived the Petitioner of property and risks setting a dangerous precedent of the tolerance of untruthfulness by attorneys in judicial proceedings. *In the Matter of Neil Lovett Wilkinson*, the Supreme Court of Georgia opined "the attorneys' actions in making false statements of material fact in briefs filed in [the Court of Appeals], and in failing to correct such statements after admitting that the statements were not true, evidence a blatant and intolerable disrespect for [the Court of Appeals]."*In re Wilkinson*, 284 Ga. 548, 668 S.E.2d 707 (2008). Additionally, *In the Matter of Sherri Jefferson*, the Supreme Court of Georgia used as its basis for disbarring Sherri Jefferson its belief this attorney made false statements to a magistrate court. *Matter of Jefferson*, 307 Ga. 50, 834 S.E.2d 73 (2019), cert. denied sub nom. Jefferson v. Supreme Ct. of Georgia, 140 S. Ct. 1148, 206 L. Ed. 2d 202 (2020), reh'g denied, 140 S. Ct. 2637, 206 L. Ed. 2d 515 (2020). In these two cases the Supreme Court of Georgia has admonished attorneys for making false statements to the court and for also failing to correct false statements even if the false statements were made by an attorney's colleague. Recognizing false statements by attorneys is abhorrent, this Court should likewise take action by addressing how this action directly impacts the opposing party by violating its right to due process

and fairness as guaranteed by the constitution. Lastly, the Petitioner in this matter was ordered by the trial court to pay the attorney's fees of the Respondents for no other reason than showing the statements made by the aforementioned attorneys were in fact knowingly and intentionally made, in fact false, and made during judicial proceedings which violate established law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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September 30, 2021.