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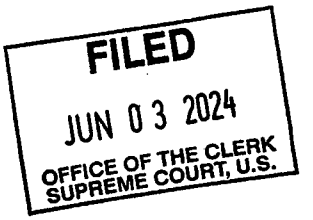

IN THE

Supreme Court of the United States

Miracle Hurston,

Petitioner,

v.

The Indiana Gaming Company, dba
The Hollywood Casino Lawrenceburg,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 1981 of Title 42 provides "all persons" in the United States "the same right" "to make and enforce contracts" as is "enjoyed by white citizens," including "the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C.§ 1981(a)-(b). This statute defines "makes and enforce contracts" to include "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b).

The Seventh Circuit held below that in order for a Plaintiff to proceed with a 42 U.S.C § 1981 claim of intentional discrimination, that discrimination must first be proven as an element of the prima facie case. In addition, the Court gave weight to the evidence, acknowledging its existence, however in its view, it was not enough.

The questions presented are:

1) Must a plaintiff prove intentional discrimination as an element of the prima facie case in order to proceed with a 42 U.S.C § 1981 claim?

2) Should the Court weigh evidence at the summary stage of proceedings, or is it a function of the jury to be the fact finder?

3) Whever the Supreme Court must finally set a precedent for the courts in the United States to ensure all pro se civil litigates have the right to "Equal Justice Under Law," "procedural Due Process," "and a fair Trial?

RELATED PROCEEDINGS

Hurston v. Ind. Gaming Co., 1:21-cv-02768-TWP-DLP (S.D. Ind. Mar. 1, 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Miracle Hurston respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

Hurston v. Ind. Gaming Co., 1:19-cv-04890-TWP-DLP (S.D. Ind. Nov. 28, 2022); District Court order on Cross Summary Motions; Appendix A.

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JURISDICTION

The Seventh Circuit Court of appeals entered judgment on November, 22, 2023, Pet. App. B. A timely filed petition for Rehearing and Rehearing En Banc was denied on January, 18, 2024. Appendix C. On April 11, 2024 Justice Barrett extended the time to file this petition to and including June 3, 2024 *See* No. 23A906. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth, Seventh, and Fourteenth Amendment: procedural Due Process Clause "no person shall be deprived of life, liberty, or property, without due process of law." And Right to Jury Trial.

42 U.S.C. § 1981 provides in relevant part:

(a) Statement of equal rights; All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined for purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

STATEMENT OF THE CASE

1. *Factual background.* I was a V.I.P patron of the Indiana Gaming Company dba Hollywood Casino Lawrenceburg between 2017-2019. I am a black male, and was the only black individual who ranked as an Icon V.I.P member due to my frequent attendance at the casino. During that time, I was involved with multiple disputes between guest and employees of the Hollywood Casino Lawrenceburg. Disciplinary action was taking against me for being a party to these disputes except for the only incident involving another black male. The incident between the other black male and myself was extremely violent and physical. I made multiple reports to the Hollywood Casino Lawrenceburg as

to how the rules were not enforced equally, and black guest received far more disciplinary action, than that of white guest; especially when one party is black and the other is white.

On June 1, 2019, myself and GM of the Hollywood Casino Lawrenceburg agreed to have direct communication in effort to resolve future failures in regards to customer service. On June 8, 2019 I got into a dispute with a white man in the Hollywood Casino gaming area at the blackjack table, which carried over to the Hollywood Casino Hotel, because the white man followed me to my hotel room to continue the dispute. During the confrontation the white man called me a, "nigger". Pushing and shoving occurred, security eventually separated us, took a report, and sent us our separate ways. I reported the incident to GM via text message, who responded with a message stating he was out of town, and would investigate the matter upon his return.

On June 13, 2019 I tried to book a hotel at the Hollywood Casino Lawrenceburg via my host, and I was denied accommodations. My host stated that the June 8, 2019 incident was under investigation, and he was instructed not to book me a room. I reached out to the GM for an explanation, but got no response. My guest and I visited the Hollywood Casino Lawrenceburg on June 14, 2019 and I was forcefully removed, and given a letter stating I was banned for the period of one year, due to my involvement in the June 8, 2019 incident, which occurred at the Hollywood Casino Hotel, between myself and the white man, who called me a "nigger", in which I reported to the GM.

2. *Trial court proceedings*. On December 11, 2019 I filed a civil complaint against the Indiana Gaming Company dba Hollywood Casino Lawrenceburg arising from alleged racial confrontations. After screening by the Court and a motion to dismiss by the Hollywood Casino the case proceeded on the remaining issues of 42 U.S.C. § 1981 discrimination, breach of contract, and intentional infliction of emotional distress.

On April 27, 2021, the Court held a discovery conference with the parties during which defense counsel, Attorney Catherine Breitweiser-Hurst, represented to the Court that it was not possible for her client to search for incident reports using the search term "altercation" but that it was possible to search by individual names. *S.D Court* (Dkt. 108). Based on this representation by counsel, the Court ordered the Defendant to produce all incident reports involving certain named individuals from January 1, 2018 to December 31, 2019. *S.D Court* (Dkt. 108 at 4).

I presented evidence to the Court, through a subject matter expert on security hardware and management systems, that the iTrak system used by the Defendant can, in fact, be searched by search terms including "altercation," a fact which would suggest that Defendant and its counsel had presented misleading or false statements to the Court. *S.D Court* (Dkt. 121). Thereafter, in its November 15, 2021 ruling on Plaintiff's Renewed and Supplemental Motion for Default Judgment Sanctions *S.D Court* (Dkt. 120), the Court ordered Attorney BreitweiserHurst to show cause why she should not be sanctioned for asserting that incident reports cannot be searched by the category of

"altercation." (Dkt. 197 at 5-8). At the conclusion of the hearings, it was confirmed that the testimony presented to the Court by Indiana Gaming was false and incident reports could be searched by search terms including "altercation".

3. *Seventh Circuit Court of Appeals.* After years of hard fought, protracted litigation summary judgment was entered in favor of Indiana Gaming on November, 28, 2022 on grounds of inadmissible evidence. I filed a timely notice of appeal in the Southern District of Indiana Court on January 11, 2023. On November 22, 2023 the Seventh Circuit Court of Appeals ruled that the relevant withheld documents would have not made a difference in the district Court's determination of the issues, and that my "best evidence" was not enough to satisfy the prima facie case to proceed to trial. Rehearing and Rehearing En Banc was denied on January, 18, 2024.

SUMMARY OF THE ARGUMENT

All relevant evidence is admissible to the Court. If evidence sparks thoughtful discussion, its persuasive value should be determined by the factfinder; being the jury in this matter. Proving discrimination to the Court, just for the opportunity to then prove discrimination to a jury, is inappropriate. If any evidence exists, upon which a reasonable mind could conclude, that a claim of action is true, the Court must not dismiss that claim on a summary ruling.

Discovery serves the purpose of narrowing down the issues, and providing support for those issues that are most relevant to the claim. For the

Southern District Court to determine that incidents involving "altercations", was relevant to my claim of discrimination, as the Court did in this matter, only to later say if those incident reports were provided, they would then become irrelevant, is a complete contradiction. If the reports involving altercations had no tendency to support my discrimination claim, the Court would have never ordered Indiana Gaming to investigate if they were able to search and provide reports involving "altercations" *See Pet. App. D.*

It is fact that Indiana Gaming provided false testimony to the Court, on multiple occasion as to their ability to search reports, by the search string "altercation" *See Pet. App. D, Pet. App. E.* It is also fact that the district Court directed me to file an amendment to this complaint at issue, to add a new claim, related to these proceedings, after I had attempted to take up the issue by separate action *See Pet. App. F.* I carried out the Court's instruction, immediately after resolution was reached regarding the separate action, and the Court determined it was too late to judicate the issue.

1. The Fourteenth Amendment of the United States Constitution provides for "Due Process". Whenever rights are involved, fair process and proper procedure must be implemented before government strips away those rights. The district Court's determination of inadmissible evidence, later followed by the Seventh Circuit Court of appeals determination that the evidence presented was not convincing enough to pursue my claim of discrimination affected me in a grave way.

The Court's denial to hear a new claim of retaliatory action taken by the Hollywood Casino against me for making a formal complaint of discrimination was a blatant disregard of my due process. As complex as the issues of my case may have been, the straight forward issue of retaliation by the Indiana Gaming Company was simplistic and obvious. The District Court chose to over complicate the matter, when all that needed to be done was a consolidation of the separate issue *Hurston v. Ind. Gaming Co.*, 1:21-cv-02768-TWP-DLP (S.D. Ind. Mar. 1, 2022), with the ongoing complaint. Consolidation was a remedy the Hollywood Casino suggested to the Court when addressing the separate complaint of retaliation and discrimination. Instead, the Court dismissed the matter for being duplicative. I addressed the Court for reconsideration and guidance as to how to address the new claim, and once that guidance was provided, I took immediate action a day later, the Court said it was too late *See App. F.*

Being that the Court found my claim of discrimination probable enough to overcome an action of dismissal by the Hollywood Casino, the Court owed me protection against retaliatory action in regards to my complaint. Even if my complaint was determined to have no validity what so ever, absent behavior against the Indiana Gaming Company's rules and guidelines I should have been allowed to remain a guest. If not for my claim of discrimination, I would have still been permitted to be a guest of the Hollywood Casino Lawrenceburg. The Court at minimum should have allowed for the amendment, considering the position, now known to be wrong, and direction giving in regards to how

to address the dismissed complaint. The Court had more than enough facts to go on, allowing it to provide a fair process, which would not infringe upon my right to pursue a complaint of discrimination, free from retaliation.

2. The Court reached contrary erroneous conclusions of law because it disregarded controlling precedent as it relates to the prima facie case requirement of discrimination, the level of punishment needed to deter future litigants that follow the footsteps of the Hollywood Casino by presenting false statements to the Court, and the importance of fair proceedings for all litigants; even those self-represented. The Court completely lost its way, showing favoritism to the rich and powerful litigant being the Indiana Gaming Company, dba Hollywood Casino Lawrenceburg.

The law is to be litigated, not bought. There is no doubt, had I conducted myself such as the Hollywood Casino Lawrenceburg, I would have faced far greater consequences than them. Many of the United States Judges are promoted from large law firms such as Johnson & Bell, which represented the Hollywood Casino. Campaign contributions are accepted by both political parties alike from rich private businesses such as the Indiana Gaming Company. I was not outlitigated by the defense counsel, Johnson & Bell. There was no outstanding, or overwhelming legal arguments put on by the defense, as the consensus would naturally assume. The Court's decision was extremely prejudicial and contrary to controlling law and precedent. The United States Supreme Court should grant Certiorari, therefore setting the record straight, and establish precedent insuring

procedural due process and a fair trial for all Pro Se litigants.

ARGUMENT

I. THE POLICE REPORT WHICH I PRODUCED TO SHOW DISPARATE TREATMENT IS ADMISSIBLE UNDER FRE RULE 803 HEARSAY EXCEPTIONS RECORDES OF REGULARLY CONDUCTED ACTIVITY, AND PUBLIC RECORDS.

Federal Rule of Evidence 803 is a set of rules that provides exceptions to the general rule against hearsay in legal proceedings.

A. Rule 803(6) creates hearsay exceptions for the regularly kept records of businesses and other business-like entities, such as institutions, non-profit associations, and government units, both organizations and individuals.

Rule 803(6) foundation may be laid either by live testimony or an affidavit from a person familiar with the business's record-keeping practices. 1) The record must appear to be an ordinary routine record of the business with no obvious signs of alteration, but the original is not required.2) The record must have been made in the routine course of business, concern its regular activities, and have been created for the entity's own internal purposes. Records prepared for outside agencies or litigation do not qualify. 3) The record must have been made at or near the time of the event or transaction. For computer records, what matters is when the entry was made, not when the record was printed out.4)

The facts recorded were within the personal knowledge of employees, agents, or others authorized to engage in the activity, although the entrant need not be the same employee as the one who had personal knowledge. A record may be based upon information passed along a chain of employees, as long as each person in chain is acting n regular course of business. 5) Statements by non-employees may not be included unless they satisfy a separate hearsay exception. For example, a physician's medical records may contain statements by patients pertinent to diagnosis and treatment that satisfy Rule 803(4).

B. Rule 803(8) creates a hearsay exception for most public records and reports.

Properly certified official records from public offices are generally admissible if they are routine, factual, based on personal knowledge of public officials, and appear reasonably reliable. Investigative reports, reports with recommendations, and one-time reports prepared for a narrow purpose are generally admissible except against a defendant in a criminal case. No witness is required if the document is certified. This is called self-authentication under Rule 902, which means that we determine whether the foundation has been established by looking at the document itself. The foundation is: 1) The document comes from a public office. This is shown either by a certification signed by an official or the live testimony of an employee of the agency in whose custody the record was found, that it is true and complete. 2) The document was prepared by public officials, though the precise identity of the official does not have to be known. Absolute certainty is not

required. 3) The record must appear regular and unaltered on its face, although the original is not required. 4) The record concerns data collected by, activities recorded by, things observed by, personnel employed by a local, state or federal government office or agency in the performance of official duties. All this can be inferred from the record itself and relevant statutory provisions, or testified to by an official in the agency. The activity does not need to be a regular one, just an authorized one.5) The source of information and other circumstances indicate trustworthiness. The records of public offices are presumed to be trustworthy and the person challenging admissibility bears the burden of proving otherwise. Indications of untrustworthiness include preparation a long time after the event and preparation for purposes of litigation. 6) The record must report facts within the personal knowledge of the public officials who prepare it. Public officials who qualify as experts may also report their opinions and diagnoses. However, statements by private citizens may not be included in official records unless they separately satisfy hearsay exceptions. See D.W.S. v. L.D.S., 654 N.E.2d 1170 (Ind. Ct. App. 1995) (report from welfare department based on interviews of people who were under no duty to report did not qualify; person making report must be public employee with personal knowledge).

C. The Deputy Chief of Police's report supported by affidavit should have been treated as admissible evidence.

The police report of the Lawrenceburg, Indiana Deputy Chief of Police, which was submitted as evidence of disparate treatment, was accompanied by his affidavit, therefore making it properly certified. The report meets all the necessary requirements to be admitted as admissible evidence under the hearsay exception rules 803(6) and 803(8) *See App. G Police Report.* The District Court and Seventh Circuit Court of appeals offered discussion in regards to the police report, and also made referenced to the report in its fact findings App. A, pg3., App. B, pg.

II. THE COURT INAPPROPRIATELY GRANTED SUMMARY JUDGEMENT TO THE DEFENDANT.

The purpose of summary judgment is to promptly dispose of lawsuits in which there is no genuine issue to any material fact of the case.

A. When ruling on summary motions, Courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment.

1. Summary judgment is appropriate only if "the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. Rule Civ. Proc. 56(a). In making that determination, a court must view the evidence "in the light most favorable to the opposing party." Adickes v. S. H. Kress & Co., 398 U. S. 144, 157 (1970).

I submitted the District Court an affidavit from a previous Hollywood Casino Lawrenceburg employee, video surveillance, an affidavit from a

guest of the Hollywood Casino who witnessed how discriminatory security treated me during a disturbance when a white lady cursed and blew smoke in my face, and a police report documenting a disturbance between myself and another black man. All of the evidence was determined to be inadmissible.

2. Although the District Court determined the evidence to be inadmissible, it used the same evidence in its fact findings, and inferred a negative position in regards to myself as to "behavior", in which no jury is required to believe.

The court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence . . . "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." Liberty Lobby, supra, at 255, 106 S.Ct. 2505. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. See Wright & Miller 299. That is, the court should give credence to the evidence favoring the nonmovant as well as that "evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses." Id., at 300.

3. The Supreme Court has cautioned that "summary procedures should be used sparingly . . . where motive and intent play lead roles . . . It is only when witnesses are present and subject to cross-examination that their credibility and the

weight to be given their testimony can be appraised." Pollar v. Columbia Broadcasting Sys., Inc., 368 U.S. 464, 473, 82 S.Ct. 486, 491 (1962). The opportunity to try a civil case before a jury should be a low bar and should focus on whether the evidence allows a jury to find for the non-movant.

When a trial was had in regards to the Hollywood Casino Lawrenceburg's intent to make false statements to the Court, misconduct was proven without fail. The Seventh Circuit Court of Appeals stated *See App. B* "Although the district court concluded that the actions of one casino employee "demonstrated a willfulness to mislead the court"", the Circuit Court didn't think it was enough for a default ruling in my favor. However, facing the scrutiny of testimony the truth in any regards was able to be determined.

A Jury Trial was necessary to judicate these issues fairly.

III. THE COURT SET TOO HIGH A BURDEN TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATORY TREATMENT.

The purpose of a prima facie case of discriminatory treatment is meant to eliminate the most common nondiscriminatory reason for a plaintiff's treatment.

A. A prima facie case of discrimination is not intended to prove discrimination.

1. " Burdine, 450 U.S. at 253, 101 S.Ct. 1089." Christian v. Wal-Mart Stores, Inc., 252 F.3d 862,

870 (6th Cir. 2001) According to the United States Supreme Court, the burden of establishing a prima facie case of discriminatory treatment is not meant to be "onerous." Id. The purpose of the prima facie case is simply to "eliminate the most common nondiscriminatory reasons for the plaintiff's" treatment, id. at 254, 101 S.Ct. 1089; a prima facie case "raises an inference of discrimination only because we presume [the defendant's] acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." Id. (quoting Furnco Constr. Corp. v. Waters,438 U.S. 567, 577, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978)) Christian v. Wal-Mart Stores, Inc., 252 F.3d 862, 870 (6th Cir. 2001).

The Seventh Circuit Court of appeals called the police report the "best evidence" in regards to proof of discrimination. This would suggest there was additional submissions to the Court considered to be evidence, even if not found to be persuasive to the Court. The Court's evaluation of the police report was that it didn't prove discrimination because the other black man and myself were treated the same after our confrontation/fight.

Clearly, a plaintiff asserting a § 1981 claim must prove intentional discrimination. Gen. Bldg. Contractors Ass'n v. Pennsylvania,458 U.S. 375, 389, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982). But it does not follow that the plaintiff must prove intentional discrimination as an element of the prima facie case. As the Supreme Court has explained, the "division of intermediate evidentiary burdens serves to bring the litigants and the court expeditiously and fairly to this ultimate question [of intentional discrimination]." Burdine,450 U.S. at

253, 101 S.Ct. 1089. According to the Court, the burden of establishing a prima facie case of discriminatory treatment is not meant to be "onerous." Id. Christian v. Wal-Mart Stores, Inc., 252 F.3d 862, 870 (6th Cir. 2001)

2. The position of the Court is extremely flawed in regards to its evaluation of the evidence of discrimination implied by the police report. The fact that the casino took no action in regards to the confrontation between myself and the other black man, proves the enforcement of the rules and regulations was of little importance to the Hollywood Casino Lawrenceburg, as long as it did not directly affect a white guest. The conflict between myself and the other black man was extremely violent and physical. The Casino took no action at all in regards to this disruption.

The inaction of the Hollywood Casino Lawrenceburg definitely creates a scenario which could be determined to be discrimination. It directly contradicts the nondiscriminatory reason giving by the casino that my behavior was the reason for the one-year ban from the casino. For instance, if there were two starving black kids in a home, and after becoming aware of the situation child services took no action, that would be determined to be discriminatory. Along the same train of logic, if there were two starving kids in a home, one black and the other white, and both were removed from the home. However, the white kid was put in a better situation than the black kid, again that would be determined to be discriminatory. Treating two individuals the same on the surface, does not eliminate discrimination, nor does it eliminate a pretextual coverup.

A Jury Trial was necessary to fairly judicate these issues.

IV. THE HOLLYWOOD CASINO LAWRENCEBURG'S FALSE STATEMENTS BY AFFIRMATION AND TRIAL TESTIMONY, WAS SO EXTREME, AND CREATED SUCH PREJUDICE, THAT DEFAULT IN MY FAVOR SHOULD HAVE BEEN GRANTED.

The purpose of sanctions in United States Courts, is to deter future actors, and uphold the integrity of the Court, in interest of protecting the public.

A. Sanctioning a multimillion-dollar establishment to pay $2500 for lying to the Court, is not a deterrence to future actors, nor does it help preserve the integrity of the Court through the lens of the public.

Federal Rule of Civil Procedure 37, as well as the Court's inherent power to manage discovery, provides the Court with broad authority to sanction a party who abuses the discovery process. Malibu Media, LLC v. Tashiro, No. 1:13-cv-00205-WTL-MJD, 2015 WL 2371597, at *10 (S.D. Ind. May 18, 2015). Sanctions serve two purposes: to penalize parties who do not follow the rules and to deter others tempted by the notion that abusive conduct has no serious consequences. Greviskes v. Univ. Rsch. Ass'n, Inc., 417 F.3d 752, 758-59 (7th Cir. 2005); see also Fed. R. Civ. P. 37(b)(2)(A)(vi); Malibu Media, 2015 WL 2371597, at *21. A

discovery sanction must be proportional to the offense, Allen v. Chicago Transit Auth., 317 F.3d 696, 703 (7th Cir. 2003), and is determined by assessing "the egregiousness of the conduct in question in relation to all aspects of the judicial process." Dotson v. Bravo, 321 F.3d 663, 667 (7th Cir. 2003).

The $2500 sanction promotes the opposite of what it was intended to do. The Hollywood Casino Lawrenceburg prevailed on a ruling of the Court for "inadmissible evidence". The unlawfully withheld records by the casino, were proven to be easily accessible, and produced. Even after a four-day trial in which the Casino lied to the Court, in regards to the availability of the records, my request for production was not honored, nor did the Court order the casino to provide the relevant documents. Instead, the Court ruled in favor of the Hollywood on Summary Motion, and issued me $2500, which equated to a nuisance fee.

B. The records withheld by the Hollywood Casino Lawrenceburg, contained potential admissible evidence.

1.The District Court determined that reports involving "altercations" were relevant to the issues at hand. However, the Defense Counsel lied to the Court and said there was no way of searching for only incidents involving a "altercation", without a manual search of every report contained in the Hollywood Casino Lawrenceburg's iTrak Security data base. On multiple occasion the Hollywood Casino Lawrenceburg and Counsel Catherine BreitwieserHurst, stated that key word searches, as well as a drop-down search criterion, limiting reports to just those involving "altercations" was

impossible *See App. D.* This was determined not to be true; one could argue that it didn't take much prudence to determine this was not true independent of expert conformation. Shockingly, the Court still discharged Catherine Breitweiser-Hurst of any wrong doing, determining that she blindly relied upon information from her client in regards to her false statements made to the Court *See App. D.*

2. The Court held a four-day trial, in regards to the availability of such reports. The requested incident reports would have made a difference, and the Hollywood Casino Lawrenceburg's defense counsel felt the same way. For the casino to lie to the Court first by two sworn statements, then proceed to lie directly under oath during a four-day hearing in regards, when it would have been simple for defense counsel to apologize to the Court, proclaim a misunderstanding of the Court's instructions, and simply provide the requested documents. The court already determined "altercations" were relevant, the reports had the potential to drastically impact the outcome of the case. To believe the reports were of no consequence, is to believe the defense counsel chose to lie to the Court for a meaningless purpose, this logic does not add up.

When the defendant refused to participate in discovery, it made it extremely difficult to replicate the experience of those similar situated to myself. It was the Court's duty to apply the proper standard in regards to determining rather there existed evidence when viewed in the light most favorable to myself. The Court was to determine if there was enough evidence to infer discriminatory intent and

focus on the third part of the prima facie test: whether sufficient facts to create a material issue of fact that I was deprived of services while similarly situated persons outside the protected class were not and/or that I received services in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory. The withheld records had the potential to support the discriminatory intent of the casino.

The Risk to Reward of Lying to the Court, outweighed the punishment enforced by the Court.

V. LEAVE TO AMEND MY COMPLAINT PRESERVING MY DUE PROCESS SHOULD HAVE BEEN GRANTED BY THE COURT.

A Plaintiffs may choose to amend a complaint for numerous reasons such as to include additional claims, correct facts, add additional parties to the suit, include additional requests for relief, or clear up inadequate claims.

A. Request for amendments should be giving freely.

The decision to grant or deny a motion to file an amended pleading rests within the Court's sound discretion. Soltys v. Costello, 520 F.3d 737, 743 (7th Cir. 2008). While leave to amend "should be freely give[n] when justice so requires," leave to amend is not automatic. Fed. R. Civ. P 15(a)(2); Crest Hill Land Dev., LLC v. City of Joliet, 396 F.3d 801, 804 (7th Cir. 2005). For instance, leave to amend is inappropriate when there is undue delay, bad faith, dilatory motive by the movant, repeated failure to cure deficiencies by amendments

previously allowed, undue prejudice to the opposing party by virtue of allowing the amendment, or the amendment would be futile. Feldman v. Am. Mann. Life Ins. Co., 196 F.3d 783, 793 (7th Cir. 1999). When a party moves to amend a pleading after the deadline to amend set by the Court, the Court applies the "heightened good-cause standard of Rule 16(b)(4) before considering whether the requirements of Rule 15(a)(2) were satisfied." Stone v. Couch, No. 1:19-cv-01193-TWP-DML, 2020 WL 4339439, at *1 (S.D. Ind. July 27, 2020).

I followed the instruction of the Court in regards to how I pursed the additional claims of discrimination. The separate complaint addressing the new claims was dismissed for being duplicative, and leave to amend the current litigation to add the new claims was denied. At the *S.D (dkt.87)* status conference held on February 25, 2021 at 1:30pm, the Court suggested that the issue of the lifetime ban from the Hollywood Casino, which was issued subsequent to the expiration of the one-year ban, and after the Court denied the Hollywood Casino's Motion to Dismiss the claims at issue, was separate issue. Therefore, I filed a separate complaint *Hurston v. Ind. Gaming Co.*, 1:21-cv-02768-TWP-DLP (S.D. Ind. Mar. 1, 2022).

B. Because good cause did exist, the district court abused its discretion in denying leave to file the proposed amended complaint.

There is no better cause, than following the Court's instructions, during Court proceedings, for doing something. I took every effort to comply with the Court, by amending my complaint and adding

the additional claims, per instruction of the Court, immediately following the dismissal of the ruled to be duplicative complaint. Also, the emphasis of "six" amendments previously being made to the complaint, is an exaggerated and overly signified issue. Many of the amendments I made to the complaint were to fix clerical errors such as a misspelled name, which was not necessary. The other amendments to the complaint were made at the direction of the Court; one jurisdictional correction during the Court's initial screening process, and another to name Indiana Gaming Company, and drop Co Defendant Penn National Gaming Inc.

When the Court says "you could have, and should have", done something with emphasis, as it did in its fact findings explaining the dismissal of the separate complaint, you follow that instruction. Being a highly impressionable Pro Se party, assuming the Court's direction is correct, it's unreasonable to think another path would have been taken, even if that is what should have been done.

REASONS FOR GRANTING THE WRIT

I. THIS OUTCOME IS IN CONFLICT WITH ANOTHER US COURT OF APPEALS, AND THE EGREGIOUS PROCEDURAL POSTURE OF THIS CASE, PUTS ALL "DUE PROCESS" AT RISK, MAKING IT NECESSARY FOR THE SUPREME COURT OF THE UNITED STATES TO INTERVENE.

The purpose of a writ of certiorari is to restore wrongfully disregarded constitutional rights at the hands of our justice system. Certiorari allows for judicial fairness, as a last resort. It is an essential and very necessary function of the United States government.

A. Certiorari is warranted because this decision conflicts with the Sixth Circuit Court of Appeals and the United States Supreme Court.

Christian v. Wal-Mart Stores, Inc., 252 F.3d 862, 870 (6th Cir. 2001), Burdine,450 U.S. at 253, 101 S.Ct. 1089.

B. Certiorari is warranted because I was deprived of Due Process.

1. The Fifth and Fourteenth amendment of the United States Constitution, guarantees *Due Process*. Due process is a guarantee which prohibits government from depriving "any person of life, liberty, or property without due process of law". *Procedural* due process lays out steps that must be taken prior to infringing upon an individual's basic fundamental rights. When judicating the fundamental rights of an individual due process guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. *Substantive* due process defines what our basic fundamental rights are defined to be. While the Fifth Amendment only applies to the federal government, the identical text in the Fourteenth Amendment explicitly applies this due process requirement to the states as well.

The Seventh Amendment states that suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. *Claims of discrimination are entitled to a jury trial.*

2. The procedural posture of the Court, which took away my fundamental right to a jury trial, on multiple proceedings, in regards to a common law civil complaint of discrimination, was not fair, orderly, or just:

a. The Court's Allowance of the defendant the Indiana Gaming Company dba the Hollywood Casino Lawrenceburg to present false statements to the Court and refuse to provide relevant evidence.
b. The Court's discharge and failure to hold Johson & Bell staff attorney Catherine Brewiester-Hurst accountable for her role in presenting false statements to the Court.
c. The Court's dismal and denial to judicate an additional claim of blatant retaliatory discrimination against the Indiana Gaming Company dba the Hollywood Casino Lawrenceburg.
d. The heightened and unreasonable burden set for me to raise a prima facie case of discriminatory treatment.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully Submitted,

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Certificated of Word Count

I certify that this document contains 6897 words, verified by me using the word count function in Microsoft Word, in which the documented was created on.

June 3, 2024

APPENDIX