

COURT OF APPEALS OF GEORGIA
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January 6, 2015

To: Mr. Michael C. Ward, GDC1000070409, Calhoun State Prison, Post Office Box 249, Morgan, Georgia 39866

Docket Number: A15A0490 **Style:** Michael Charles Ward v. The State

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IN THE COURT OF APPEALS
STATE OF GEORGIA

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COURT OF APPEALS OF GA

Michael Charles Ward
Appellant

CASE NO.: A15A0490

(2008-CR-0038)

FILED IN OFFICE

STATE OF GEORGIA
Appellee

JAN - 2, 2015

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Appellant's Reply to Appellee's Brief

Asst. Dist. Attorney James Chafin has intentionally attempted to defile this Honorable Court with a series of successive statements of fraud in a relentless campaign to defame Appellant's character and inflame the prejudice of this court. This two-fold campaign to defame and inflame has characterized the State's means of persecuting the Appellant.

Mr. Chafin fraudulently states in his brief, "On November 5, 2007 Appellant was arrested in the woods on the property of Cindy Mitchell...." (Appellee's Brief, p.1)

Mr. Chafin, who prosecuted the case in August, 2009 and January 2010, knows Appellant was NEVER ON Cindy Mitchell's property on the day of his arrest.

Appellant was charged with criminal trespass on that day, but the State could offer NO EVIDENCE of ANY trespass and Appellant was naturally acquitted

Certificate of Service

I hereby certify that I have included a true and correct copy of Appellant's Reply to Appellee's Brief in the U.S. mail with sufficient postage addressed to:

JAMES V. SHAFIN
Asst. Dist. Attorney
Western Judicial Circuit
325 EAST WASHINGTON STREET
ATHENS, GEORGIA 30601

Respectfully submitted this _____ day of ~~December~~, 2014.

Michael Charles WARD
Michael Charles WARD
Appellant

GDC # 10 000 70409
CALHOUN STATE PRISON
P.O. Box 249
MORGAN, GA. 39866-0249

of the charge.

This intentional perpetration of fraud in a 2014 Brief is a reprehensible example of prosecutorial misconduct that has typified this malicious prosecution.

In Mr. Chafin's Brief, a "course of conduct" of perpetrating fraud, he also fraudulently states, "Appellant initiated contact with Ms. Mitchell on December 7, 2007 (sic) by sending a book to her home...." (Ibid, p. 2)

Mr. Chafin knows there was never any direct contact by the Appellant and Ms. Mitchell and the indictment reads, "[Appellant]... to wit: did make contact with Cindy Mitchell... by causing to be delivered to her a book ordered from Amazon.com entitled 'Redeeming Love'...." (State v Ward 2008-CR-0038) (Indictment Attached)

Mr. Chafin knows the book was sent from Amazon.com through USPS to Ms. Mitchell's home address in an indirect violation of a condition of pre-trial release. Mr. Chafin continues his reprehensible perpetration of fraud when he states, "Appellant also contacted the Cobb County Sheriff's office (sic) in an attempt to have Ms. Mitchell arrested for the same crimes that Appellant was arrested for in Oconee County." (Ibid, p. 2)

Trial testimony will show Appellant contacted the Cobb County Police Dept. in January 2008, only to have Ms. Mitchell stopped from accessing Appellant's emails remotely. Mr. Chafin's fraud is preposterous and outrageous.

Mr. Chafin's "pattern of behavior" in perpetrating fraud upon this Court again is stated, "While in custody Appellant mailed a letter from the Oconee County Jail to his son with instructions to have Ms. Mitchell's home broken into...." (Ibid., p. 2)

The regrettable fictitious mission of mayhem was not a letter, and trial testimony will show it was definitely not mailed to Appellant's son, but to his former, vacant address. This pernicious fraud by Mr. Chafin demonstrates the malicious prosecution by the Dist. Attorney's office in the Western Judicial Circuit.

What relevancy to this appeal are the specific details of the contents of that fictitious writing, other than the malice and hostility to inflame and enrage this Court by Mr. Chafin?

The perpetration of fraud by Mr. Chafin continues when he states, "The letter (sic) was obtained by Appellant's family and turned over to authorities

in Oconee County." (Ibid., p.2)
Lucy Ward, Appellant's hostile ex-wife and divorced for over sixteen years, and definitely is NOT a family member, testified at trial that she was the one that contacted and provided the writings to authorities in Oconee County.

Mr. Chafin attempts to defile this Court through fraud when he states, "... Appellant has filed numerous motions and asked for several continuances on his motions." (Ibid., p.3)

Appellant has never requested any continuances. Mr. Chafin continues his fraud by stating, "Appellant asked for a continuance on the Motion for New Trial..." (Ibid., p.3) and "Appellant has asked for continuances regarding the Motion for New Trial at every proceeding he has appeared once the trial was concluded." (Ibid., p.7) These fraudulent statements are typical of a prosecution in want of probable cause and must therefore manufacture fraud to supply the deficiencies in the State's case.

Appellant filed the Motion for Transcripts (Doc. #2) on May 10, 2013 and an Amended Motion for New Trial on June 27, 2013. (Docs 8 & 9)

ON September 16, 2013, Appellant filed a Motion for Judgment stating, "Both motions are essential to proceed with the pending hearing for New Trial."

ON March 20, 2014, Appellant appeared for a Status hearing to be heard concerning his Motion for Transcripts, a general demurrer (Doc. #6), and his Amendment to the original Motion for New Trial - NOT for a hearing for New Trial. Without the needed transcripts to substantiate Appellant's claims of error in his Amended Motion, he cannot proceed with the hearing for New Trial. Appellant made NO motion or request for continuance on March 20, 2014.

ON June 12th 2014, Appellant appeared again for a Status hearing in which the Dept. of Corrections failed to transport his legal materials. Again, Appellant did NOT move for NOR request any continuance.

Contrary to Mr. Chafin's series of perpetrated fraud, Appellant has never requested a continuance of any kind. Appellant believes the transcripts of hearings are so essential to his claims of errors, without them he is NOT prepared to argue for a hearing for New Trial. PERTAINING to Appellant's legal representation, AGAIN

Mr. Chafin is intentionally misleading this Court. Appellant originally retained J. Melnick as his counsel on November 7, 2007. Due to his incompetence and ineffectiveness, J. Melnick allowed his client to enter a plea to an obviously legally insufficient and fatally flawed indictment (see General Demurrer, Doc. #6). The fictitious mission of mayhem was provided to authorities sometime in late spring or early summer of 2008. J. Melnick withdrew from the case on February 15, 2009 amidst complaints of incompetence and ineffectiveness which prejudiced Appellant's defense.

Public Defender Michael Brooks was appointed by the Court until Appellant retained M. Wiggins.

At the conclusion of the first, week long stalking prosecution in which the State offered no evidence that the Appellant had ever followed, placed under surveillance, or contacted the alleged victim for the purpose to harass or intimidate her, the Appellant was acquitted of stalking. (See attached Jury Verdict form). With no pattern of stalking behavior, the single, benign contact of "causing the delivery of a book" would certainly not establish the required course of conduct necessary for a conviction for aggravated

stalking (case no. 2008-CR-0038). And yet, M. Wiggins attempted to get his client, the appellant, to plead guilty with time served of eighteen months in incarceration just, "to get to go home."

The only conviction of the fifteen charges in case no. 2007-CR-0524 was a possession of tools charge where an illegal seizure of property in an illegal search of appellant's automobile, before his arrest and without his permission, was conducted.

Along with M. Wiggins' insistence on pleading guilty to stalking, he also failed to file any appeal on the lone conviction. So, before the thirty day limit to file a direct appeal had expired, M. Brooks agreed to represent the appellant on appealing the possession of tools conviction and also the second, successive stalking charge. M. Wiggins obviously was not working in the best interest of his client and his services were terminated on August 25, 2009.

From August 24, 2009 to January 2010, M. Brooks had four months to prepare to defend a simple, single charge. But with just over a week before trial, and Brooks having made no preparation for trial, appellant was forced to represent himself on the second,

successive stalking prosecution.

Appellant filed a Motion for Appointment of Appellant Counsel (Doc. #31) on July 17, 2014 and stated, "[Appellant] expresses his need for legal counsel and desires to exercise his right for appointment of Appellant Counsel for a hearing for new trial and for direct appeal."

Mr. Chafin also raises the irrelevant fact to this appeal of a federal lawsuit against Det. Kevin Nolley (Ibid., p. 9). The pending civil suit names Nolley as a party to violating Appellant's civil rights in a separate Georgia judicial circuit and has absolutely no relevancy to this appeal, but obviously a part of Mr. Chafin's continued campaign to defame and inflame. This campaign by Mr. Chafin is consistent with his decision to prosecute a second offense of stalking even though no evidence of stalking behavior had been introduced into the predicate stalking prosecution that concluded with a not-guilty verdict.

Was the Appellant arrested on Cindy Mitchell's property?
Did a family member contact authorities in Oconee Co.?

These statements of fraud are misconduct by the prosecutor and serve to support the claims of a malicious prosecution in violation of Appellant's civil rights.

RE-ENUMERATION OF ERRORS

I.

The Court announced, "I believe we're here on the Defendant's Amended Motion and original Motion for New Trial... ARE YOU READY?" (Transcripts from 06/12/14, p. 2) Appellant was not there for any hearing for New Trial and responded, "Well, I'm not ready for the hearing for New Trial." Until Appellant receives the transcripts to substantiate and demonstrate his claims of errors, he remains unprepared for the hearing for New Trial.

Appellant repeatedly informed the Court he was not prepared for ANY HEARING, "SO I HAVE NOTHING OTHER THAN JUST WHAT'S ON TOP OF MY HEAD WHICH IS NOT GOING TO BE SUFFICIENT." (T., 06/12/14, p. 2)

The Court asked, "SO ARE YOU SAYING YOU WANT TO GO FORWARD WITH BEING HEARD TODAY?" (T., 06/12/14, p. 6)

To which Appellant replied, "NO SIR, WHAT I'M SAYING

RIGHT NOW IS I'D LIKE TO HAVE APPOINTMENT OF APPELLATE COUNSEL OUTSIDE OF THE WESTERN JUDICIAL CIRCUIT." (T, 06/12/14, p. 6)

THE COURT AGAIN ASKED, "... I'M READY TO HAVE YOUR HEARING IF YOU'RE READY TO HAVE IT." (T, 06/12/14, p. 7) TO WHICH APPELLANT REPLIED, "I'M NOT READY SIR," AND AGAIN A SECOND TIME, "I'M NOT READY SIR." (T, 06/12/14, p. 7) AND AGAIN, "BUT I'M NOT READY TODAY, SIR." (T, 06/12/14, p. 8)

ON PAGE ELEVEN OF THE TRANSCRIPTS THE COURT ASKED, "DO YOU WANT TO TALK ABOUT THE TRANSCRIPTS?" APPELLANT ASSUMED THE COURT WAS ASKING, IF APPELLANT CASUALLY AND INFORMALLY "... WANTED] TO TALK ABOUT THE TRANSCRIPTS?" APPELLANT HAD NO IDEA THE COURT WAS INTENDING TO CONDUCT A FORMAL, OFFICIAL HEARING TO RENDER A FINAL DECISION.

"WANTING TO TALK ABOUT..." IS NOT THE SAME AS, "ARE YOU PREPARED FOR THE MOTION FOR TRANSCRIPTS?" APPELLANT WAS CAUGHT OFF GUARD BY THE QUESTION AND DUE TO THE LACK OF NOTES, STILL WAS UNPREPARED TO ARGUE FOR THE TRANSCRIPTS.

APPELLANT DID NOT "SUBMIT TO A RULING OR ACQUIESCE IN THE HOLDING," BUT DID PARTICIPATE IN WHAT HE THOUGHT WAS A CASUAL DISCUSSION WITHOUT FORMAL IMPLICATIONS. APPELLATE DID NOT REQUEST THE 06/12/14 HEARING, AT

NO fault of his own, he was UNPREPARED for the hearing, and he NEVER REQUESTED ANY CONTINUANCE. Appellant HAS NEVER REQUESTED ANY CONTINUANCES AT ANY TIME - EVER, IN ANY PROCEEDINGS.

II.

As Appellant complains in his Motion for Judgment (Doc. #2) filed May 9, 2014, the Motion for transcripts (Doc. #2) filed May 10, 2013, was pending MORE THAN 365 days. Appellant complained, "continued failure or refusal to render a judgment is depriving [Appellant] of due process by effectively precluding his right to appeal." Appellant then cites pertinent and relevant parts of O.C. G.A. § 16-5-21 "In a county with less than 100,000 inhabitants, it shall be the duty of the judge of the Superior ... Court, unless providentially hindered ... to decide promptly, within thirty days after the same have been ... submitted to him without argument, all motions ... of any nature." Statutory law requires a ruling "within thirty days", NOT three hundred days.

III.

THE 11/09/07 hearing (Transcript #1) is NOT unique to case NO.: 2007-CR-0524, but the PRESIDING judge,

Judge Coleman also testified at the 2008-CR-0038 trial about the proceedings on that day. Det. Nolley also testified in the 2008-CR-0038 case about the proceedings on 11/09/07. This hearing is even more applicable to the 2008-CR-0038 case than the preceding case. The errors made in that hearing must be a part of the 2008-CR-0038 conviction appeal. Denying this transcript would deny Appellant's due process protection by precluding his right to appeal based on errors in that hearing.

Similarly, the 07/02/09 Similar Transaction/Subsequent difficulty hearing (Transcript #3) was cited in the 2008-CR-0038 case as having been already litigated and allowed in the previous prosecution, thus should be allowed in the instant case. So, the abuse of judicial discretion on 07/02/09 in the 2007-CR-0528 case was propagated in the instant case and makes it relevant to the claim of error of a biased and prejudicial judiciary in the instant case. The 12/04/09 hearing (Transcript #5) based its argument made on 07/02/09, including it in the 2008-CR-0038 proceedings. Transcripts from both proceedings are needed to substantiate and demonstrate Appellant's claims of ineffective assistance

of counsel, judicial abuse of discretion, and prosecutorial misconduct.

Appellant raises in his Amended Motion for New Trial the errors "D.) Malicious Prosecution by the State" and "E.) Bias and Prejudice by the Judiciary." (See Docs # 8, 9) The errors cannot be substantiated and demonstrated apart from the bond hearings (Transcript # 10)

CONCLUSION

How can this Court adequately and effectively review Appellant's claims of error absent the transcripts?

How can the trial court? *Sales v State*, 152 Ga. App. 635.

The federal courts have frequently held that "the standards governing the sufficiency of any petition filed pro-se are to be held with less stringency when petition is drafted without aid of counsel." *Holsomback v White*, 133 F3d 1382 (11th Cir, 1998).

Respectfully submitted this 29th day of December, 2014.

Shelley Ward
Michael Charles Ward
Appellant
GDC # 10000 70409
Cathoun State Prison
P.O. Box 249

GEORGIA, OCONEE COUNTY

IN THE SUPERIOR COURT OF SAID COUNTY

The Grand Jurors selected, chosen, and sworn for the County of OCONEE, to wit:

I, Victor Marlon Doss, FOREPERSON

- | | |
|---|-----------------------------------|
| 2. <u>Dwayne Joseph Allen</u> | 14. <u>Kirby Lynn Kilgore</u> |
| 3. <u>Bernard G. Amiot</u> | 15. <u>Richard T. Lee</u> |
| 4. <u>Paul Jackson Brooks</u> | 16. <u>Barbara Ann Mathers</u> |
| 5. <u>William Warren Chandler, Sr.</u> | 17. <u>Michael G. McCurley</u> |
| 6. <u>Kris H. Christopher</u> | 18. <u>Gena L. Mulkey</u> |
| 7. <u>Mark Olex Covillon</u> | 19. <u>A. Wayne Nix</u> |
| 8. <u>Meagan Louise Cundiff</u> | 20. <u>Phillip Gael Rice</u> |
| 9. <u>Joyce Garland Davis</u> | 21. <u>Carlton E. Shelton</u> |
| 10. <u>Linda L. Dottery</u> | 22. <u>Robert Neil Sutherland</u> |
| 11. <u>Amrev Harden</u> | 23. <u>James V. Vaughn</u> |
| 12. <u>Marshall Andrew Jacobson</u> | 24. <u>Marcia B. Verbrugge</u> |
| 13. <u>Sarah Tuck Jennings</u> | 25. <u>Wendy Denise Wade</u> |

In the name and on behalf of the citizens of the State of Georgia, do hereby charge and accuse **MICHAEL CHARLES WARD** with the offense of **AGGRAVATED STALKING** for that the said **MICHAEL CHARLES WARD** on the 3rd day of December, 2007, in the County aforesaid, in violation of a condition of pretrial release, did contact another person without their consent and for the purpose of harassing and intimidating them, to wit: did make contact with Cindy Mitchell, without her consent, in violation of a condition of pre-trial release wherein he was ordered to have no contact with her, dated Nov. 6, 2007, from the Magistrate Court of Oconee County, Georgia, by causing to be delivered to her a book ordered from Amazon.com entitled "Redeeming Love"; in violation of O.C.G.A. § 16-5-91, Contrary to the laws of said State.

Contrary to the laws of said State, the good order, peace and dignity thereof.

Indictment

Kevin Nolley, Prosecutor

OCONEE COUNTY SUPERIOR COURT, September Term, 2007

KENNETH W. MAULDIN, District Attorney

IN THE SUPERIOR COURT OF OCONEE COUNTY
STATE OF GEORGIA

August 7 2009
4:50 pm
[Signature]

STATE OF GEORGIA

V.

MICHAEL CHARLES WARD,
Defendant.

Criminal Case No.: 2007-CR-0524-J

VERDICT

Count 1. We, the Jury, find the Defendant not guilty of Burglary.

We, the Jury, find the Defendant not guilty of Theft by Taking.

Count 2. We, the Jury, find the Defendant not guilty of Burglary.

Count 3. We, the Jury, find the Defendant not guilty of Burglary.

We, the Jury, find the Defendant not guilty of Theft by Taking.

Count 4. We, the Jury, find the Defendant not guilty of Burglary.

Count 5. We, the Jury, find the Defendant not guilty of Computer Theft.

We, the Jury, find the Defendant not guilty of Theft by Taking.

Count 6. We, the Jury, find the Defendant not guilty of Computer Invasion of Privacy.

Count 7. We, the Jury, find the Defendant not guilty of Computer Theft.

We, the Jury, find the Defendant not guilty of Theft by Taking.

Count 8. We, the Jury, find the Defendant not guilty of Computer Invasion of Privacy.

Count 9. We, the Jury, find the Defendant guilty of Possession of Tools for the Commission of a Crime.

Count 10. We, the Jury, find the Defendant not guilty of Stalking.

Count 11. We, the Jury, find the Defendant not guilty of Criminal Trespass.

This 7 day of August, 2009.

[Signature]
Foreperson

the hearing.

The December 21, 2009 bond hearing was just SEVEN days after the State had moved the court to RELEASE Appellant from custody and dead docket the case.

The trial court also erred by failing to provide copies of the audio recordings to verify the accuracy of the trial transcripts.

Appellant does NOT believe anyone claims the printed transcripts are inaccurate and without error. Once the audio recordings have been transcribed and the court reporter paid for her work, what is to prevent anyone from comparing the audio recording with the printed version.

O.C.G.A. § 5-6-41 (f) "Where any party contends that the transcript or record does not fully or truly disclose what transpired in the trial court... the trial court shall set the matter down for a hearing... and resolve the difference so as to

make the record conform to the truth." As an economy of time and court resources, Appellant is requesting a copy of the audio recordings to verify the truth and accuracy of the transcriptions.

Appellant does not believe the authorities are saying, "This is what you said, because we say it's what you said, and don't ask us to prove it!"

If there is any contention, once the reporters are paid, then it would be a nominal expense to burn new CD's of the recordings for accuracy verification.

In *Wade v State*, 231 Ga. 131, the Supreme Court held "... that the Appellant has been effectively denied his right to appeal because a transcript of his trial is not available to him."

Appellant is not seeking trial transcripts, but he is seeking "proceedings" transcripts that contain error that Appellant needs to raise in his hearing

for new trial. Failure to provide these basic court documents amounts to obstructing Appellant from claiming reversible errors in his endeavor to seeking post-conviction relief.

CONCLUSION

Appellant believes he should be provided with the transcripts from the requested proceedings, along with the audio recordings, so he can proceed with his hearing for new trial.

In the event the trial court cannot produce the needed transcripts this Court should REVERSE Appellant's conviction and REMAND to the trial court and be granted a new trial or released from custody.

Appellant also requests from this Court ANY initiative by the Court to provide relief for this manifest injustice of an illegal incarceration, including appointment of Appellant counsel.