

IN COURT OF APPEALS OF GEORGIA
STATE OF GEORGIA

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KERRY CRAIG WALKER,

Appellant,

v.

JACQUELYN WAGNER,

Appellee.

APPELLANT'S BRIEF
ARGUMENT FOR APPEAL

APPEAL CASE NUMBER: A11A0409

Part I - APPELLANT'S BRIEF - ARGUMENT FOR APPEAL

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Comes now Kerry Craig Walker, Appellant in the above styled case to present an argument as to why appeal should not have been dismissed by Judge Adele Grubbs and why appeal should be GRANTED in the Court of Appeals of Georgia. The system failed Appellant and he now upholds his right according to the United States Constitution and according to the law in this United States of America to have his case heard by an impartial jury of his peers and for said jury to render a decision.

Appellant was falsely arrested on September 25, 2001 for three misdemeanors as the result of a fake Incident Report filed by Jacquelyn Wagner (Appellee) on September 19, 2001 from alleged incidents that occurred on September 16, 2001. The Appellee contradicted every statement in the first interview with Detective Preston Peavy and the story changed drastically. The Appellee told investigators that the Appellant was a drug dealer, when in fact the Appellant

had been clean and sober since April 12, 1992 and had nothing to do with alcohol or drugs, and in fact helped others with drug or alcohol problems, as he does to this day. In fact Appellant had been working 50 to 70 hours a week as a General Manager/Construction Manager for Patriot Builders Services for the last three (3) years up until his false arrest. Appellee told the investigators that Appellant had hit himself all night long and all night long he had beat himself up, when in fact the Appellee had violently assaulted the Appellant. In fact in the two recorded interviews that have been documented in this case it is clear the Appellee is making up the story as she goes and there are blatant contradictions in her story. There were so many contradictions in the recorded interviews that the second interview with Investigator Massey from the D.A.'s office was never transcribed, until the Appellant paid the transcriber from the Cherokee County Sheriff's Department \$350.00 to produce a written transcription of said interview. Even the jurisdictions of the alleged incidents by Appellee changed from the information in the Police Report to the information in the interviews with the investigators, and this can be clearly demonstrated by the copy of the police report and the transcripts of the recorded interviews. There was a conversation between the Appellant and Appellee the day Appellant got out of jail where the Appellee admitted that Appellant did not hit himself, and Appellant recorded this conversation on a recording device, but the batteries were low and it did not record properly. The State had a copy of this recording and a transcript that was made from the recording by Mary Wilson did not correctly transcribe the tape. The Appellant was never able to get a copy of this tape from the State as it was "misplaced" and then apparently "lost". The Appellee also filed a Stalking T.P.O. on the Appellant when in fact it was the Appellee that was stalking the Appellant

and this can be shown in the evidence. The Stalking T.P.O was **DISMISSED** by Judge **John B. Sumner**. It can be demonstrated that the Appellee is clearly pathologically dishonest and feeds off bringing harm to others. Appellant was in actuality the victim of acts of violence, domination, and control by Appellee. Appellant's false arrest began a chain of tragic events that lasted well over four years and in different forms continues to present day. Appellant was indicted for a felony because of tainted information provided to the Grand Jury as a direct result of the false Incident Report filed by Appellee on September 19, 2001.

As a result of the fake crime report filed by Appellee, Appellant has suffered and continues to suffer financially, emotionally and physically. Appellant attended several hearings and showed up for several trial calendars over the course of a year and a half in hopes of going to trial, and Appellant finally went to trial on Case 02-CR-0053, which ended with alleged Felony Tampering with Evidence by the State. Appellant heard little about his case over the next two years, and Appellant hand delivered a letter to **District Attorney Garry Moss** asking him to formally dismiss all charges. Appellant received a letter in the mail a few days later with a trial date to take place within a few weeks. Appellant later learned that Case 02-CR-0053 was nolle prossed and that Appellant had been re-indicted in Case 02-CR-1029 for Aggravated Assault, Simple Assault, Simple Battery and Obstruction or Hindering a person making an emergency phone call. All crimes he did not commit and where he was in fact and in truth the victim of violence at the hands of Appellee.

Appellant suited up and showed up for over a half dozen trial calendars over the course of nearly a year on Case No. 02-CR-1029, and although Plaintiff literally demanded to go to trial, the prosecution never would take him to trial.

During the over four year battle to prove his innocence Appellant lost his 4300 square foot custom home that he, as a architectural designer, personally designed with a detailed set of working drawings and personally constructed on a beautiful lot at the corner of the Etowah River and Lake Allatoona and all other assets as well as tens of thousands in cash. The events of this case killed Appellant's mother and other family members have suffered as a direct result of this case, and Appellant's life was ruined. The corruption by the State against this Court has taken a severe toll on Appellant and his family and it will take an even greater toll on the integrity of the legal system if Appellant is not **GRANTED** the constitutional privilege of petitioning for a governmental redress of grievances. By constitutional law (14th Amendment), no state in the United States has the right or authority to circumvent the United States Constitution.

The First Amendment (Amendment I) to the United States Constitution is part of the Bill of Rights. The amendment prohibits the making of any law "respecting an establishment of religion", impeding the free exercise of religion, infringing on the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances. [Emphasis added]

On November 23, 2005 an Order of Dismissal was entered on Case 02-CR-1029 by the **Honorable Judge Jackson Harris** and the charges against Appellant were formally **DISMISSED** by the State. Appellant did not receive the **ORDER** by U.S. Mail via his attorney

until December 19, 2005, over two weeks after the death of his beautiful, creative, loving, and very patriotic mother; she died before she could hear that this wrenching case against her son had finally been dismissed. This could have been avoided by the government timely mailing the **ORDER** to Appellant which it is supposed to do. To them it was just routine stuff. To Plaintiff and his family it was more than that. People are not just numbers in the court's computers or filed away in the court's records. Each and every innocent person who becomes caught in the legal system like a cog in a wheel is human, flesh and blood, who have been mistreated by the people in power to whom each person is taught he or she should trust and respect. Yet the current system is burdened with corruption, incompetence, and legal technicalities that may deter the truth seeking process.

"It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error." -- U.S. Supreme Court in American Communications Association v. Douds, 339 U.S. 382,442.

"Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." -- U.S. Supreme Court Justice Tom C. Clark - Mapp vs. Ohio

"It is not burdensome to give reasons when reasons exist. As long as the Government has a good reason for its actions, it need not fear disclosure. It is only when the Government acts improperly that Procedural Due Process is truly burdensome, and that is precisely when it is most needed." -- [Ponte Vs. Real, 85 Led 2nd 553] Ponte v. Real, 471 U.S. 491 (1985)

Appellant continued to fight for justice and he fought hard to have his false arrest expunged from the record. Appellant received an **ORDER** dated the 25th day of February, 2010

GRANTING right to seek his expungement claim by **DENYING** the Cherokee County Sheriff's Department's refusal to grant Appellant's Expungement Claim.

Appellant prepared for a **Hearing on Plaintiff's Amended Notice to Seek Expungement** on August 20, 2010 in Cherokee County Superior Court and Appellant was prepared to present his case and his witnesses, but there was no opposition from Counsel for the Defendants. Appellant emerged victorious in this hearing and an **ORDER** was signed on **August 23, 2010** by the **Honorable Murphy C. Miller GRANTING** Appellant's expungement claim. Appellant was granted his expungement request to have his September 25, 2001 arrest expunged from the record. Said **ORDER GRANTING** Appellant's expungement claim brings about a **final judgment** in the court's order dated **February 25, 2010** thereby giving Appellant his right to appeal his instant case to the appellate court.

Appellant's request for expungement of Simple Assault, Simple Battery, and Obstruction of a 911 call and all related indictments and documents stemming from this arrest on September 25, 2001 has also been approved and signed by **Karen Kelly/T.A.C of GCIC/NCIC Services of the Cherokee County Sheriff's Office** and by the **Prosecuting Attorney, District Attorney Garry T. Moss**. The packet has been forwarded on to the **Georgia Crime Information Center** for final processing to purge all criminal records from said arrest. The documents on said expungement and other critical documents that support this case and have been filed in a related case, (Case No. 07-CV-3325), in Cherokee County are being filed in Case No. 07110459 via a **Notice of Supplemental Record** in Cobb County Superior Court to be forwarded to the Georgia Court of Appeals.

Appellant has all the documents, recordings, video tapes and witnesses to support the truth of his case. Appellant's powerful witnesses include Attorney Jeff Rusbridge, Wade Pittman, who examined the evidence and who will be deemed an expert witness, and Drew Mayo, a citizen witness, who was at the scene at the time of the most serious incident alleged by Appellee and who witnessed Appellant's severe injuries, but was never interviewed or questioned by investigators.

Appellant has suffered emotional, physical, and financial hardships as the result of a fake crime report filed by Appellee. Appellant's mother suffered and died under the pressure and duress resulting from the long nightmare that culminated from the fabricated Incident Report filed by Appellee. Appellant states a claim from which relief can and should be granted. Appellant, Kerry Craig Walker, has a constitutional and legal right to a jury trial on this valid and important case, which may have far reaching impact and could bring positive change to the justice system, and Appellant again requests to have a trial by jury and to have a jury hear the evidence and then have this jury render a decision in this case.

Part II – ENUMERATION OF ERRORS

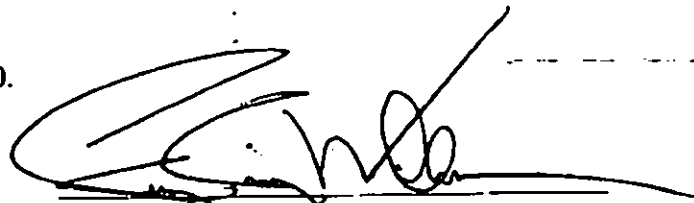
The Court of Appeals rather than the Supreme Court has jurisdiction because this case does not involve any items enumerated in Article VI, Section VI, Paragraph II of the Constitution of the State of Georgia. All documents filed in said case going back to the

original filing filed on November 20, 2007, including Notice of Appeal, Notice of Amended Appeal, Amended Notice of Amended Notice of Appeal, Pleading and Response to Hearing on Why Plaintiff's Appeal Should Not be Dismissed, Argument for Appeal (with Exhibit A-Letter to Judge Adele Grubbs), Order Granting Pauper's Affidavit and ordering transmittal of case to the Appellate Court, and all other documents filed in the Superior Court of Cobb County, and all supplemental documents should be transmitted as part of the record of appeal.

If one combines the civil case and the criminal case timeline, this case has been shoved through the court system for 110 months, yet Appellant has never had one hearing scheduled to present his side of the story or the facts of his case, or to allow his witnesses to speak. Appellant was the **VICTIM** of violence and was **falsely arrested** based on a **FAKE CRIME REPORT** filed by the perpetrator of the violent crimes against him. Appellant's case may have far reaching impact to bring about positive change to the legal system.

Appellant request that his Constitutional right under the law to have his case presented to a jury be upheld by this court.

This 15th day of November, 2010.



Kerry Craig Walker
Sui Juris Appellant

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STATE OF GEORGIA

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v.

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CERTIFICATE OF SERVICE

CIVIL ACTION APPEAL
CASE NO. A11A0409


CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the foregoing, **Appellant's Brief - Argument For Appeal**, to all interested parties in the within and foregoing matter, Civil Action Appeal No. A11A0409, dated November 15, 2010 in the United States mail with sufficient postage affixed thereon to insure delivery as follows.

Jackie Wagner/Pro-se
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This 15th day of November, 2010

Please address all
communications to:
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Kerry Craig Walker pro se
Plaintiff, Sur Juris