

22-6999

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED
FEB 21 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ALLEN MAKI- Petitioner

Vs.

STATE OF TEXAS- Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

Allen Maki
Pro per
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QUESTIONS PRESENTED

- (1) Whether there is a conflict between Tex Criminal Code Art. 44.17 And Tex Gov. Code Sec. 30.00015 (a).
- (2) Whether it fair to regard Maki's gentle slap in the cheek as- as the Police reported- strike in the face causing bodily injury and is a sudden passion slap is regarded as violation of Tex Penal Code Sec. 22.01, while neither the victim nor Maki regarded the contact as offensive or provocative and can Maki deprived from his Second Amendment
- (3) Can a court regard any fact mentioned or any evidence submitted irrelevant, if they were not directly related to the day in which the violation had happened and can a defendant be prohibited from bring witnesses and submit evidence in hearings?
- (4) Whether it fair when the State is granted the "Motion in Limine" to prevent Maki from obtaining evidence from Police Open Record. And does requesting Police Open Record and ruling from the Office of the Attorney General are applicable to civil process only and are not allowed in criminal cases.
- (5) Can the Appellate Court disregard Maki's filing of the Appeal Bond if Maki timely filed it but the court clerk failed to post it; and did the appeal courts really have no jurisdiction over the appeal.
- (6) Can a Judge preside in a case when she has no Jurisdiction?
- (7) Are Judges allowed to, out of court, prevent the delivery of subpoenas to witnesses.

LIST OF PARTIES

Although the party mentioned in the caption of this case is "The State of Texas", we have never encountered with anybody from the state of Texas. The only party we have known as Plaintiff and Respondent is the Assistant City Attorney as follow:-

Attorney for Respondent (Trial):

Holly L. Hayes
Assistant City Attorney
MS 63-0300
P.O. Box 90231
Arlington, TX 76004

Attorney for Respondent (Appeal):

Unknown

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Petitioner, Allen Maki respectfully prays that a writ of certiorari issue to review the judgment below of the Court of Criminal Appeals of Texas

INTRODUCTION

The Clerk did not prepare an appropriate list for referencing the submitted record for easy access. The Clerk also failed to transfer many record to the appellate court. Our “Court Reporter Record”, our “Request for Transfer of Record”, and our “Appellant Motion to Supplement Appellate Record”¹ will all serve as guiding index as follows:

- **Reporter Record (RR)**: They are included in the “Request for Transfer of Record”, dated March 18, 2022. Please note that we have 5 volumes of Reporter Records. Bellow we will show the title as given by the external Court Reporter to each volume, the date of hearing or trial and the abbreviation. The abbreviations will serve as reference for the Court Reporter volume:

<u>Title</u> ²	<u>Date</u>	<u>Abbrv.</u>
RECORDING 00084087 (Hearing)	December 28, 2021.	R0
AUDIO TRANSCRIPTION (Trial)	January 03, 2022.	AT
RECORDING (Hearing)	February28, 2022.	RE
RECORDING 4322 (Hearing)	March 02, 2022.	R4

¹ Maki filed “Second Appellant Motion to Supplement Appellate Record” – By himself- with the County Court to transfer 4 volumes of the report record, because the Court Clerk refused to transfer them.

² As we mentioned before that the Court refused to cooperate with external certified Court reporter. A complete hearing was made to have the cooperation of the Court, but it was refused. Please see the Court Reporter Transcript volume (RE). The whole hearing of February 28, 2022 was to discuss what the Court Reporter needed from the Court for coordination.

For example, if we want to refer to a statement in the Reporter Record volume titled "Recording", hearing of February 28, 2022, page 9, line 16; we will write it like (RR, RE, 09, 16).

- Request for Transfer of Record (CR): Dated March 18, 2022. Below there are 13 described documents Maki requested the Clerk to file them with the Clerk of the Court of Appeal. Those mentioned 13 documents will serve as part of the reference for the Court record:

01. Copies of 4 (four) Subpoenas filed with Court Clerk on February 14, 2022³.
02. Copy of "Defendant's Motion for Summary Judgment" filed on November 5, 2021.
03. Copies of all letters (10 of them) sent to the regional presiding Judge Milner, filed or sent directly to him.
04. Copy of defendant's "Motion to Recuse Judge Erin Jackson" including all attachments filed on February 8, 2022.⁴
05. Copy of motion "Correction to Defendant's Motion to Recuse Judge Erin Jackson" filed on February 9, 2022.
06. Copy of email sent to the Court on December 11, 2021, regarding defendant inability to attend the hearing of December 16, 2021.
07. Copy of "Motion for New Trial" filed on January 11, 2022

³ The Court Clerk did not transfer them with the record to the Appellate Court.

⁴ The Court Clerk did not transfer it with the record to the Appellate Court.

08. Copy of "Request for Findings of Fact and Conclusions of Law" filed on January 11, 2022.
09. Copy of "Notice of Appeal" filed on January 19, 2022.
10. Copy of "Order Granting or Denying New Trial" Dating January 12, 2022.
11. Copy of "Defendant Motion to Reconsider" filed on January 22, 2020.
12. Copy of "Judgment" dated January 3, 2022.
13. Copy of the detailed police report. Case number 2021-01640338.

If we want to refer to a record in Court record above, for example, line 02 "Defendant's Motion for Summary Judgment" filed on, November 5, 2022; we will write it like (CR, 02). If there is exhibit for, example, number 5 in this "Defendant's Motion for Summary Judgment"; we will write it like (CR, 09, 05).

- Appellant Motion to Supplement Appellate Record (MR): Dated April 19, 2021. Below are eleven records will be added as a supplement:

01. Email from City of Arlington to show Receiving Maki's Open Record request.

02. Letter from Assistant City Attorney (ACA) Nena Chima-Tetteh; sent by email from Open Records; they are unable to release the requested records.

03. Copy of a letter from the Office of Attorney General (OAG) to ACA Dawn Roberts regarding Maki's complaint.

04. Copy of a letter from Maki to ACA asking for proof that he had agreed to withhold the requested records.

05. Copy of letter from ACA to OAG.
06. Copy of a letter to the Victim from ACA to call or dismiss the case.
07. Email from Maki to the Court to show that he would be unable to attend the hearing of December 16, 2021.
08. Copy of piece of Manila envelope to show Maki had three witnesses that he wanted to pay Appeal Bond.
09. Affidavit showing that Hon. Judge Evans obstructing justice.
10. Copy of letter from Tarrant County Court to Arlington Municipal Court.
11. Affidavit showing that Hon. Judge Jackson obstructing justice.

If we want to refer to a record in the supplement record above, for example, line 08 "Affidavit showing that Hon. Judge Evans obstructing justice" filed on February 15, 2022; we will write it like (MR, 08).

The list that was submitted by the Court Clerk is not reliable, as the documents were not numbered. Also, there were many records not included.

OPINION BELOW

The Supreme Court of Texas's one-page denying review issued on October 19, 2022 is attached as Appendix A. Rehearing denying was issued on November 23, 2022⁵ and is attached as Appendix B. The opinion of the Court of Appeals Second District of Texas (Marked do Not Publish, Tex. R. App. P. 47.2(b)) was issued on August 04, 2022 and is attached as Appendix C.

⁵ Maki knew about it, late, only on December 05, 2022. See Court Clerk email attached as E.

Rehearing denying was issued on August 25, 2022 and is attached as Appendix D.

JURISDICTION

The date on which the highest state Court decided my case was on October 19, 2022. A copy of that decision appears at Appendix A.

motion for rehearing was thereafter denied on November 23, 2022, appears at Appendix B. but the Clerk of the Court sent the notice of denying to petition only on December 05, 2022, Appendix E.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following provisions of the Statutes are involved in this case:-

Trial Court

Tex Criminal Code Art. 44.17⁶:

In all appeals to a county Court from justice Courts and municipal Courts other than municipal Courts of record, the trial shall be de novo in the trial in the county Court, the same as if the prosecution had been originally commenced in that Court. An appeal to the county Court from a municipal Court of record may be based only on errors reflected in the record.

Penal code 22.01(a)(3):

A person commits an offense if the person causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Tex. Admin. Code § 70.11(d)(3)(F):

The sign will contain the following wording Responsibilities of Governmental Bodies. All governmental bodies responding to information requests have the responsibility to Request a ruling from the Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor.

⁶ This code is in conflict with Gov. Code Sec. 30.00015(a).

Tex Government Code Sec.522.108:

Provided in Appendix J

Tex Government Code Sec 522.301:

(a) a governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

Tex Government Code Sec. 552.302:

Failure to make timely request for attorney general decision; presumption that information is public. If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Sections 552.301(d) and (e-1), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Tex. Crim. P. Art. 44.16:

If the defendant is not in custody, a notice of appeal as provided in Article 44.13 shall have no effect whatever until the required appeal bond has been given and approved. The appeal bond shall be given within ten days after the sentence of the Court has been rendered, except as provided in Article 27.14 of this code.

Tex. Gov. Code Sec. 29.055(c):

A municipal Judge who does not recuse or disqualify himself or herself:

- (1) shall forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the regional presiding judge; and
- (2) may not take other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

Tex. Gov. Code Sec. 30.00020:

(a) Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file with the municipal Clerk:

- (1) the reporter's record;
- (2) a written description of material to be included in the Clerk's record in addition to the required material;
- and
- (3) any material to be included in the Clerk's record that is not in the custody of the Clerk.

(b) On completion of the record, the municipal judge shall approve the record in the manner provided for

record completion, approval, and notification in the court of appeals.

(c) After the court approves the record, the Clerk shall promptly send the record to the appellate court Clerk for filing. The Appellate Court Clerk shall notify the defendant and the prosecuting attorney that the record has been filed.

The Appellate Court

Tex Gov. Code Sec. 30.00015(a):

If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the municipal Court of record. The bond must be approved by the Court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.

Tex. R. App. P. 44.3:

A Court of appeals must not affirm or reverse a judgment or dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities

The Court of Appeals

Tex. Gov't Code Sec. 30.00027(a):

- (a) The appellant has the right to appeal to the Court of appeals if:
- (1) the fine assessed against the defendant exceeds \$100 and the judgment is affirmed by the appellate Court; or
 - (2) the sole issue is the constitutionality of the statute or ordinance on which a conviction is based.

Tex. R. App. P. 43.2:

The Court of appeal may:

- (a) affirm the trial Court's judgment in whole or in part;
- (b) modify the trial Court's judgment and affirm it as modified;
- (c) reverse the trial Court's judgment in whole or in part and render the judgment that the trial Court should have rendered;
- (d) reverse the trial Court's judgment and remand the case for further proceedings;
- (e) vacate the trial Court's judgment and dismiss the case; or
- (f) dismiss the appeal.

The following provisions of the United States are involved in this case:-

Second Amendment:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Fifth Amendment - U.S. Constitution

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.

Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment - U.S. Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

STATEMENT OF THE CASE

We have to show at the begging that we have a conflict between Tex Criminal Code Art. 44.17 and Tex Gov. Code Sec. 30.00015(a), which considerably affected this case.

The Appellant Allen Maki (Maki) met a lady from Morocco in an international website. This lady happened to be the Victim and the state witness in this case. The lady's name is Hanane Sebhaoui (Sebhaoui). Maki went to Morocco and got married to Sebhaoui on November 5, 2018. They lived together in Morocco for about a year. Maki had to leave his wife in Morocco and came back to the USA to prepare for her an immigration visa for permanent residency. It took more than a year for Sebhaoui to get the immigration visa to come to the USA. On December 10, 2020 Sebhaoui came to the united state to find that Maki was diagnosed with Cancer (CR, 02, 01). Maki's oncologist warned Maki that he and family members may both develop "Clinical Depression" (CR 02, 03). Clinical Depression causes, among other things, great distress and impairs functioning. Sebhaoui in the other hand started to show some symptoms, when she saw her primary physician, he referred her to a Neurologist (CR, 02, 02), but she never took it seriously.

On June 08, 2021 during argument Maki slap his wife in her cheek. After 5 days On June 13, 2021 Sebhaoui called 911; not because the slap, but because she does not want to be sent out of the country. Arlington Police Department through Officer Duran # 3299, by mistake accused Maki of Assault Causes Bodily injury(Appendix F). On June 26, 2021, a citation issued, to correct the above mistake, showing there was no bodily injury, but there was only offence of physical contact (Appendix G). On June 29, 2021, Maki received an email (MR 02) form the assistant City Attorney (ACA) Nena Chima –Tetteh

informing Maki that according to 522.108 Government Code they are not able to release the evidential information that he requested from Police Open Record. Maki complained to the Office of the Attorney General (OAG). On June 6, 2021 OAG sent a letter to ACA Dawn Roberts and sent a copy to Maki (MR, 3). On November 05, 2021, Maki filed Motion for Summary Judgment (CR, 02), although it was inaccurate it was not denied (RR, AT, 93, 12). That motion included the State witness and victim's Sebhaoui "Declaration" (CR, 02, 04) on which she stated that there was no family violence took place and she called the police only because she does not want to go to Morocco. On January 03, 2022, on his trial, Maki was found guilty. The judgment (assault/domestic violence) was as follows (CR, 12):

1. He was asked to pay fine and costs \$581.
2. He is subject to state and/or federal⁷ laws which prohibit him from possessing a firearm. Deprive of the Second Amendment
3. He was informed that; that convection maybe used to enhance any future charge involving domestic violence.

On January 11, 2022, Maki filed his Motion for New Trail (CR, 07). On January 12, 2022, Judge Jackson denied Maki's motion for a new trial (CR, 10). On January 19, 2022, Maki filed his Notice for Appeal (CR, 09). ON January 20, 2022, Maki filed his appeal Bond, but the Clerk refused to post it and Maki asked security Morales to be a witness that he came to file the appeal bond. On

⁷ There was no mentioning of which state or federal law.

February 2, 2022, the Court set a show cause hearing to be on March 10, 2022. On February 08, 2021, Maki filed a motion to recues Judge Erin Jackson (CR, 04)⁸. There was no hearing made till today to hear the motion to recuse Judge Jackson. As there have been no hearing made to hear the motion for recusal, Judge Jackson is absolutely without jurisdiction in this case; and any action taken by her in this case before the recusal hearing is void, Government Code Sec. 29.055(c). On March 10, 2022, without jurisdiction, Judge Jackson hared the hearing for show cause. The Judge ordered Maki to pay the fine of \$596.00 and totally ignored the Appeal Bond issue. On March 02, 2022 Judge Jackson without jurisdiction heard another hearing. On that hearing security officer R Morales testified⁹ as hostile witness that Maki showed up and he saw a credit card in his hand (RR, R4, 09, 22). On March 28, 2022 Judge Jackson committed the act of “obstruction of Justice” when she out of Court prevented the Subpoena delivery person to deliver a subpoena to security officer R. Morales. See affidavit (MR, 11). On March 24, 2022 Judge Evans allowed Maki to file his appeal bond after hearing Maki’s story regarding the Clerk refusal to post the appeal bond and preventing him from filing it. Judge Evans prepared a document titled “Cash Appeal Bond” and ordered the Clerk to allow Maki to file the appeal bond. On March 24, 2022 Judge Jackson without jurisdiction, again, signed the “Cash Appeal Bond” after adding, among other things, “Not Sufficient bond”, suggesting

⁸ Although this Motion was properly filed, this motion was never transferred to the County Court with the other record.

⁹ Although Judge Jackson made every effort to prevent the officer from coming to Court for testifying, at that date it was a miracle, the officer was happened to be in the Courtroom working as Judge Jackson’s bailiff.

remanding the case to municipal Court for execution of the sentence (Appendix H). On April 21, 2022, ACA representing the state filed "State's Motion to Dismiss for Lack of Jurisdiction" On May 04 Appellate Court dismissed the appeal for lack of jurisdiction, relying on the state motion. As the Court Clerk did not make a proper reference for easy access and he also did not include important documents with the transferred record. On April 19, 2022 Maki filed "Appellant Motion to Supplement Appellate Record" (MR)¹⁰. On April 19, 2022 Maki, also, filed his brief with County Criminal Court. On April 21, 2022 Maki filed "Second Appellant Motion to Supplement appellate Record", because the Court Clerk refused to file 4 volumes of Reporter Records. On April 21, 2022 the State filed "State Motion to Dismiss for Lack of Jurisdictions". On May 04, 2022 the Appellate Court dismissed the appeal. On May 18, 2022 Maki filed "Appellant's Motion for Rehearing". On June 6, 2022 Maki filed "Notice of Appeal" to show that he is taking his appeal to the Court of Appeal Second District. On August 4, 2022 the Court of Appeals 2nd District of Texas dismissed the appeal relying of Tex. Gov. Code Ann Sec. 30.00027. On August 30, 2022 Maki filed his "Notice of Appeal" to take his appeal to Court of Criminal Appeals of Texas. On September 23, 2022 the same Court received Maki's "Motion for Discretionary Review". On October 19, 2022 the Court refuses to hear the motion. On November 1, 2022 the Court receive Maki's "Motion for Rehearing. On

¹⁰ We have to show here that the Court Clerk failed to timely transfer the record to the Appellate court until Maki filed his "Request for Transfer of Record" on March 18,2022. #

November 23, 2022 the Court denied Maki's "Motion for Rehearing (Appendix B), but the Court Clerk did not send the notice of denial till December 5, 2022 (Appendix E).

Due to the Police error mentioned above the case should have never been existed. Due to the fact that Sebhaoui's complaint was not about family violence, but it was about the fact that she believed she would be sent out of the country; Maki should not be found guilty. Due to the fact that the Clerk refusal to post a timely filed appeal bond; the appeal should have never been dismissed in ether the Appellate Court or the Court of appeals.

REASONS FOR GRANTING THE PETITION

I. Conflict between Tex Criminal Code Sec. 44.17 and Tex Gov. Code Sec. 30.00015(a)

This conflict is considerably affecting the outcome of this case. Tex. Criminal Code Art. 44.17, part of it stated "In all appeals to a county Court from justice Courts and municipal Courts other than municipal Courts of record, the trial shall be de novo in the trial in the county Court, the same as if the prosecution had been originally commenced in that Court". While Tex Gov. Code Sec. 30.00015(a) part of it stated "the defendant may not take an appeal until the defendant files an appeal bond with the municipal Court of record". We are of the opinion that Tex Gov. Code Sec. 30.00015(a) is irrelevant and cannot be applied in this case, because according to Tex Criminal Code Art. 44.17, although this is an appeal, this appeal has to be treated as a trial and this trial is

“de novo” as if the prosecution had been originally commenced in that Court. In other words, when the prosecutor, just, commenced the trial the appeal bond was not an issue.

II. No family Violence

Neither Maki nor His wife regarded the contact as offensive or provocative. In their Amended Complaint the State (ACA) accused Maki of Family Violence-Offensive/Proactive Contact PC 22.01([a])(3) by striking his wife in the face. The Word *strike* is very exaggerative, while the physical contact was a mere *slap*. Judge Jackson when issued her ruling that Maki is guilty, she relied on the fact that According to the Police testimony (RR, AT, 66, 15) she said, “based on her demeanor at the time she was afraid, whether you think she was or not doesn’t change the fact she was” (RR, AT, 132, 01).

The followings will prove that Sebhaoui was never afraid of Maki, because he was never acted violently or provocatively against her:

- (1) She told 911 that Maki did not hit her (RR, AT, 49, 10) Although, Maki honestly informed the Police that he has slapped his wife (RR, AT, 124, 01).
- (2) She waited 5 days before she called the 911 (RR, AT, 53, 05) (RR, AT, 74, 25), and Sebhaoui showed that between the period from the date of the incident June 8 to the date she called the Police June 13, 2021, her relationship with Maki was very good (RR, AT, 59, 19), the officer was not right when he described her demeanor (RR, AT, 66, 15). We believe that the Court relied on a

hearsay evidence which is the officer's description (RR, AT, 132, 23) instead on the best evidence which is the affidavit of the victim herself (CR, 02, 04).

(3) Sebhaoui showed that on June 13, 2021, she was not afraid of Maki, but she was afraid because she called the Police and the fact that there was a Police officer in the house (RR, AT, 59, 01).

(4) When The State asked her witness officer Duran #3299: "in your experience and professional experience, was she upset? The witness answered, "She was very upset" (RR, AT, 66, 15). When Maki asked Sebhaoui why she was upset she showed that she was upset because she [did not] want to go to Morocco¹¹ (RR, AT, 53, 25). Instead of depending on the Police descriptions, why there was no body camera footage (Best Evidence) was played to show Sebhaoui's demeanor in a real action?

(5) Maki asked Sebhaoui "When I hit you, when I slapped in the face 8th of June, did you think like I am violent, or I was provocative to you?" Sebhaoui answered "NO" (RR, AT, 109, 16). Sebhaoui also mentioned that she did not regard Maki was provocative or offensive because she knew that he was taking medication and he was reacting under the influence of Chemotherapy (RR, AT, 49, 21)

(6) Sebhaoui called 911 not because she was afraid of violence, but she called the Police because she did not want to be sent outside the country to Morocco. She believed that Maki would force her to leave the country to

¹¹ The translation was not good. The translator mentioned the opposite *she wanted to go to Morocco*.

Morocco as she agreed (RR, AT, 53, 12). The question is; was there any proof of force?

(7) Sebhaoui left the house to go to shelter and returned after 3 days (RR, AT, 110, 11). She left to shelter on June 13 and came home on June 17, 2021. The reason is to wait until her ticket to Morocco expired on June 16, 2021 (RR, AT, 59, 13) according to British Airways itinerary (CR, 2, 05), so she would be sure that she will not be going to Morocco. We have to mention here also that Maki assured her that he would not send her to Morocco. We knew by now the whole ordeal of calling the Police and leave the house is not about violence and provocation, but because she believed that she would be sent out of the country to Morocco (RR, AT, 53, 12).

That means that Maki proved that the State Evidence was insufficient to prove that Maki is guilty beyond the reasonable doubt and the fact finder has erred when she relied on Sebhaoui's demeanor as described by the Police Officer (RR, AT, 132, 01).

III. Denying Request of Evidence¹²

The ACA pretended that she was not aware of what is going on or maybe she was not really aware of the law. She was trying to show the Court that the State had nothing to do with OAG and Maki must directly deal with the OAG and Police Open Records (RR, AT, 24, 25). Judge Evans believed the ACA (RR, R0, 05, 02) and Judge Jackson granted the state the "Motion in Limine" (RR, AT,

¹² Please note that this subject involves one administrative law, and 3 government laws

25, 08) by which Maki can no longer even mention the words "Attorney General" or "Police Open Record". Although the Judge gave Maki a chance to argue why the Court should not grant the "Motion in Limine", the Judge cut off Maki's argument from the middle (RR, AT, 27, 05). Judge Jackson also supported the theory that getting ruling from the OAG is a *civil process* (RR, AT, 27, 05)¹³.

Judge Evans, also, believed that Maki's problem is with the OAG and not with the Court or the ACA. Maki had evidence to prove that the issue of Police Open Record is between ACA representing the State and OAG, because when Maki requested the record from the Police Open Record, he did not receive an answer from the Police Open Record, but he received the answer from the ACA, namely Nena Chima-Tetteh, (MR, 02). When Maki contacted the OAG, the OAG did not write to the Police Open Record, but OAG wrote to ACA Dawn Robert (MR, 03). Maki explained the law to the Court and proved that Maki's problem is never with the OAG or the Police Open Record, but Maki's problem is with the ACA who represent the State, because they prevented the Police Open Record from releasing the requested materials to Maki and they did not ask for ruling from the OAG, according to Tex. Admin. Code § 70.11(d)(3)(F) and Government Code Sec 522.301, both Nena Chima-Tetteh and Dawn Roberts stated in their emails that Maki agreed that they would not send the request for ruling to OAG (MR, 02) and (MR, 05). Maki informed the Court that he never made agreement with the

¹³ We will prove from Chief Teri SIMMONS v. KUZMICH 166 S.W.3d 342 (2005), No. 2-03-193-CV that that getting ruling from the OAG is not a *civil process*.

city, to waive his right of sending his request to the OAG for rulings (RR, AT, 26, 18) and (MR, 04). It does not make sense that Maki denies himself his own request. Although he managed to explain Tex. Admin, Maki also tried to explain to the Court Government Code Sec. 552.301 but he could not because the Judge prevented him and kept interrupting him (RR, AT, 36, 04). From here we can conclude that Maki's problem is neither with the OAG nor with the Police Open Records, but the problem is with ACA, because they are the one who prevented the Police Open Record from sending the requested information to OAG to get the ruling. Therefore the "Motion in Limine" should have been denied. Both Judges, namely Jackson and Evans, prevented Maki from mentioning anything about OAG and they granted the State the "Motion in Limine". Especially, Judge Jackson who threatened Maki that he would be held in contempt of Court if he even mentioned the Attorney General or Police Open Record (RR, AT 28, 16). For Judge Jackson's prevention review (RR, AT, 27, 12) to (RR, AT, 28, 18); and for Judge Evans review (RR, R0, 04, 18) to (RR, R0, 26, 04).

ACA informed Maki that according to Government Code Sec.522.108 they are not able to allow the Police Open Record to release the requested information. In Chief Teri SIMMONS v. KUZMICH 166 S.W.3d 342 (2005), No. 2-03-193-CV, second issue (Appendix I). In Chief Teri SIMMONS v. KUZMICH 166 S.W.3d 342 (2005), No. 2-03-193-CV, second issue (Appendix I). The party

seeking to withhold the information has the burden of proof in the trial Court¹⁴ to prove the exception from disclosure and presumably must comply with the steps mandated by the statute to seek and preserve such an exception from disclosure.

IV. Maki timely filed bond and Judge Jackson had no jurisdiction

On January 20, 2022 Maki went to file the appeal bond, but Greg Nelson, the Clerk supervisor, as usual, refused to post it. Maki Asked officer Morales to witness the incident, the officer gave Maki his name and his budge number, as officer Morales 1590. On the hearing of March 3, 2022 officer Morales, as hostile witness, stated on the record that he saw the credit card in Maki's hand (RR, R4, 9, 22). Judge Jackson obviously designed a fact from the above short testimony of the officer, stating that the Clerk told her¹⁵, out of Court, that Maki showed a credit card, but he did not want to pay (RR, SC, 03, 04) and (RR, SC, 5, 07). Later on Judge Jackson came with a new idea which is Maki comes to pay with improper paper work (RR, SC, 5, 9)¹⁶. Again Judge Jackson changed her mind and stated that that Maki was also trying to pay the appeal bond at the wrong time which is Maki tried to pay the appeal bond when he was submitting the motion for a new trial¹⁷ (RR, SC, 3, 10). The question here is which of the Judge's stated facts should we believe?

¹⁴ This is to prove that the Court erred when stated that the trial Court has no jurisdiction over Police records and the OAG (RR, R0, 25, 05).

¹⁵ That is hearsay and violation of the Sixth Amendment; "to be confronted with the witnesses against him".

¹⁶ There is no paper work is needed to file the notice of appeal.

¹⁷ Logically nobody thinks of appeal before the motion of new trial is acted upon and denied.

On February 14, 2022, Maki tried to subpoena Greg Nelson, Ms. Garcia and Ms Diaz but that time Judge Evans prevented the subpoenas delivery man from serving any witness. Maki has the subpoena delivery man as witness to prove such incident (MR, 09). On March 2, 2022, again, Maki tried to subpoena officer Morales, but this time Judge Jackson out of Court came to prevent the service and (MR 11)¹⁸.

There is a pattern of refusal of filing documents, bonds and transcripts made by the Clerk of the Court. Please review our "Petition for Discretionary Review" under "Statement of The Case" footnotes 3, page 4; footnote 5, page 5; and footnote 7, 8, 9 and 10 page 6; we will notice that the Clerk of the Court has the habit of refusing filings; he had refused filing of many legal instruments, bonds and transcripts. It sounded as the Court instructed Greg Nelson, the Clerk supervisor, to refuse any kind of filing made by Maki. From this pattern we can come to the conclusion that Maki's timely filing of the appeal bond was most probably also refused by the Clerk.

As Maki claimed that he timely filed his appeal bond, Judge Evans on March 24, 2022, conducted a hearing and *approved* the filing of the appeal bond and instructed the Clerk to post the bond. Therefore- as the appeal bond was *given* by defendant and *approved* by Judge Evans- this appeal bond was legally filed and the Appellate Court had jurisdiction over this appeal. Although, Judge

¹⁸ Both Judges Evans and Jackson committed the act of "Obstruction of Justice" and violate Maki's Sixth Amendment- to have compulsory process for obtaining witnesses in his favor - when both Judges out of Court prevented the delivery of subpoenas to witnesses.

Evans approved the filing and prepared “Cash Appeal Bond” document and instructed the Clerk to file it, the “Cash Appeal Bond” document was later around March 24, 2022 denied by Judge Jackson who had no jurisdiction– as we mentioned before from February 08, 2021- in this case according to Government Code Sec. 29.055(c)(2) as.

V. The County Court should have not dismissed the appeal

Gov. Code Sec. 30.00015(a) did not mention that the money has to be deposited into the treasury, but the law simply stated that the bond has to be filed. Maki proved directly and in directly that he timely filed the appeal bond, but the Clerk failed to post it. The section of law was not violated by Maki, but actually violated by the Clerk of the Court. Maki has many evidences to prove that he had timely filed the appeal bond, but the Clerk supervisor failed to post it. Judge Evans on March 24, 2022, conducted a hearing and *approved* the filing of the appeal bond and instructed the Clerk to post the bond. Therefore- as the appeal bond was *filed* by the defendant and *approved* by Judge Evans- according to Code of Tex. Crim. P Art. 44.16, this appeal bond is legally filed. The Appellate Court dismissed the appeal, without performing regular procedures in order to be sure that Maki really did not timely filed the appeal bond. Therefore, there was a defect or irregularities in the Appellate Court procedure. The Appellate Court should have allowed a reasonable time to correct or amend the defects or irregularities before dismissing the appeal, according to Tex. R. App. P. 44.3

VI. The Court of appeals should have not dismissed the appeal

In its memorandum of Opinion dated August 4, 2022, The Court of Appeals Second District stated "Because he has no right to appeal from the county criminal Court's order, we dismiss the appeal for want of jurisdiction". The Court relied on Tex. Gov't Code Ann. § 30.00027(a). This section of the law gave us 2 options to choose from in order to be able to appeal to Court of Appeals:

1. The judgment is affirmed by the appellate Court; or
2. The sole issue is the constitutionality of the statute or ordinance on which a conviction is based.

Maki was not appealing - the second option- the constitutionality of the statute or ordinance on which a conviction is based. Maki is appealing the first option which is the judgment has to be affirmed. The Memorandum in its foot note of page 3 stated (Appendix C) "Maki acknowledged that he is not appealing the constitutionality of the statute on which his conviction is based. ...that does not change the county criminal Court dismissed, rather than affirmed his appeal".

The Memorandum mentioned only Maki is not appealing the constitutionality of the statute on which his conviction is based. It did not mention; what really Maki was appealing. There were 2 cases with different issues here:

The first case issue was created in the municipal Court regarding the violation of Penal Code Sec. 22.01(a)(3), "the constitutionality of the statute or ordinance on which a conviction is based ". The second case issue was created in the County Criminal Court No. 10 (Appellate Court) regarding government code section 30.00015. Maki was not appealing the first issue which it was dismissed. But He

was appealing the second issued which it was affirmed. In other words, when the county criminal Court issued a judgment to dismiss the appeal that was an affirmed judgment. To further explain; if we review Tex. R. App. P. 43.2, according to this rule; if a judgment was issued to dismiss the appeal; this judgment of dismissal in its own is an affirmed judgment. Therefore, Maki is appealing an affirmed judgment. Therefore, this Court has jurisdiction in this case and should have not dismissed the appeal.

CONCLUSION

Police Errors:

1. Police relived an officer before the investigation was compeered.
2. Police did not consider the Fact that calling 911, was not because of the physical contact, but it was for the wife does not want to go out of the country to Morocco.
3. The police described the offence as *strike in the face causing bodily injury*; while it was a merely *sudden passionately* slap in the cheek.

It was a Police error; the Case should have not existed.

Trial Courte Errors:

The Court prevented Maki from introducing any evidence mistakenly relying on Tex Gov. Code Sec.522.108 and granting the prosecutor the "Motion in Limine"

1. The Court Clerk refused to post Maki's Appeal Bond, when it was timely filed.

2. Judge Jackson presided in many hearings while she was lacking jurisdiction.
3. Judge Jackson obstructed Justice when she prevented the Subpoena Person from delivering the Subpoena to office Morales.
4. Judge Jackson Accepting out of Court testimony (Hearsay), violating Maki's 6th Amendment.
5. Court prevented Maki from talking about anything not related to the time of the incident.

If it was not the errors of the trial Court Maki should have not been found guilty.

Appellate Court Errors:

The Appellate Court violated Tex R. App. P 44.3 and Maki's Due Process rights according to the 5th and the 14th Amendments when dismissing the appeal relying on Tex. Gov. Code Sec.30.00015(a) - without reviewing the brief and performing proper procedures in order to be sure that Maki really did not timely filed the appeal bond. In other words, the Judge did not know anything about the appeal and his judgment of dismissal was prejudicially rendered relied on the state motion's prudence.

If it was not the error of the Appellate Courts, the appeal should have not been dismissed.

Court of Appeals Errors:

The Court of appeals 2nd District dismissed the appeal- relying generally on Tex Gov. Code Ann. 30.00027(a). The Court of Appeals believed that Maki was appealing the dismissed trial Court judgment (the constitutionality of Penal Code 22.1(a)(3)), but in fact he was appealing particularly the affirmed judgment (the constitutionality of Tex Gov. Code Ann. 30.00015(a)) of the Appellate Court according to Tex Gov. Code Sec. 30.00027(a)(1). In other words, Maki was not appealing the dismissal, but he was appealing the order of dismissal itself.

If it was not the error of the Court of Appeals the appeal should have not been dismissed.

We ask the honorable Court that the petition for a writ of certiorari should be granted.

Respectfully submitted,



Allen Maki

Date: February 21, 2023.