



June 2, 2017

Board of Disciplinary Appeals

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF	§	
L. MICKELE DANIELS	§	CAUSE NO. 57321
STATE BAR CARD NO. 05374900	§	

MOTION FOR ENTRY OF JUDGMENT OF DISBARMENT

TO THE HONORABLE BOARD:

COMES NOW, Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), and files this its Motion for Entry of Judgment of Disbarment, showing as follows:

1. On March 14, 2016, Petitioner filed its Petition for Compulsory Discipline against Respondent, L. Mickle Daniels, (hereinafter called "Respondent") seeking compulsory discipline based upon Respondent's conviction in Case No. 139959801010, styled *The State of Texas v. Daniels, Leiroy Mickle*, in the 230th District Court of Harris County, Texas, wherein Respondent pled nolo contendere to Misapplication/Fiduciary/Finan 20k – 100k, a Third Degree Felony, and was placed on community supervision of for a period of five (5) years and ordered to pay \$212.00 in court costs.

2. On May 2, 2016, an Interlocutory Order of Suspension was entered by the Board of Disciplinary Appeals which provides in pertinent part, as follows:

It is further ORDERED that this Order is interlocutory and that the Board retains jurisdiction to enter a final judgment when the appeal of the criminal conviction is final. TRDP 8.05; *In the Matter of Mercer*, 242 SW 3d 46 (Tex.2007).

3. Following the appeal by Respondent of his criminal conviction in Case No. 139959801010, on the charge of Misapplication/Fiduciary/Finan 20k – 100k, a Memorandum

Opinion with Judgment (Exhibit A) was issued by the Fourteenth Court of Appeals, at Houston, on or about May 24, 2016, in Cause No. No. 14-15-00111-CR, *Leiroi Mickele Daniels, Appellant v. The State of Texas, Appellee*, which affirmed the judgment issued by the District Court.

4. On or about February 22, 2017, a Mandate was issued (Exhibit B) by the Fourteenth Court of Appeals, at Houston, in Cause No. No. 14-15-00111-CR, *Leiroi Mickele Daniels, Appellant v. The State of Texas, Appellee*, which affirmed the judgment issued by the District Court. True and correct copies of the Opinion with Judgment and Mandate issued by the Fourteenth Court of Appeals, are attached hereto as Exhibits A and B, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits A and B at the time of hearing of this cause.

5. Petitioner represents to the Board that the Judgment entered against Respondent, Leiroi Mickele Daniels, has now become final. Petitioner seeks the entry of a judgment of disbarment. Attached hereto as Exhibit C is a true and correct copy of the form of judgment of which Petitioner seeks the entry herein.

PRAYER

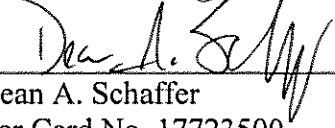
WHEREFORE, PREMISES CONSIDERED, Petitioner prays, upon notice to Respondent, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

Dean A. Schaffer
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

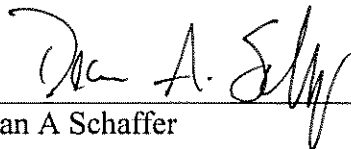
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: dschaffer@texasbar.com



Dean A. Schaffer
Bar Card No. 17723500
ATTORNEYS FOR PETITIONER

NOTICE OF HEARING

NOTICE IS GIVEN that this Motion for Entry of Judgment of Disbarment is set for trial on the merits before the Board of Disciplinary Appeals, in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 4th day of August 2017**. This Motion for Entry of Judgment of Disbarment is submitted for filing with the Board of Disciplinary Appeals on the date of Certificate of Service set forth below.



Dean A Schaffer

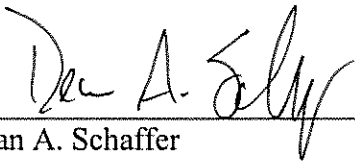
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent for personal service on June 2, 2017, as follows:

L. Mickle Daniels
5083 Skipping Stone Lane
Sugar Land, Texas 77479

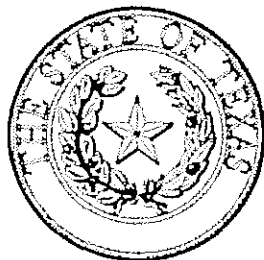
L. Mickle Daniels c/o Wayne Paris
Two Riverway Suite 1080
Houston, TX 77056

By facsimile 713.961.3082



Dean A. Schaffer

Affirmed and Memorandum Opinion filed May 24, 2016.



**In The
Fourteenth Court of Appeals**

NO. 14-15-00111-CR

LEIROI MICKELE DANIELS, Appellant

V.

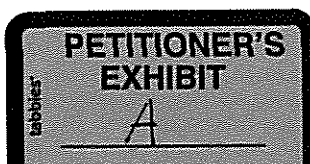
THE STATE OF TEXAS, Appellee

**On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 1399598**

M E M O R A N D U M O P I N I O N

Appellant Leroi Mickele Daniels appeals the trial court's denial of his pre-trial motions to quash his indictment for the offense of misapplication of fiduciary property.¹ After the denial of the motions, appellant pleaded no contest to the charges and the trial court deferred a finding of guilt and assessed punishment at five years of community supervision. Appellant challenges the court's denial of his motion in one issue. We affirm.

¹ Tex. Penal Code Ann. § 32.45(b) (West 2010).



FACTUAL AND PROCEDURAL BACKGROUND

Appellant was indicted for the offense of misapplication of fiduciary property with a value over twenty thousand dollars and under one hundred thousand dollars. Tex. Penal Code Ann. § 32.45(b), (c)(5) (West 2010). The property at issue was a Mercedes-Benz automobile that was the subject of an asset forfeiture lawsuit in Harris County. The first paragraph of the indictment alleged that appellant:

did then and there unlawfully, while a fiduciary, namely a co-surety to the Court's replevy bond, intentionally and knowingly misapply property to wit: a 2000 Mercedes Benz S 500 with a motor vehicle identification number of WDBNG75J4YA039643 of value of over twenty thousand dollars and under one hundred thousand dollars by dealing with said property contrary to an agreement under which the Defendant held the property and in a manner that involved substantial risk of loss to the 157th District Court, the owner, of said property by selling the vehicle and failing to return the motor vehicle to the court on the day of trial.

The second paragraph of the indictment alleged that appellant:

did then and there unlawfully, while a fiduciary, namely a co-surety to the Court's replevy bond, recklessly misapply property to wit: a 2000 Mercedes Benz S 500 with a motor vehicle identification number of WDBNG75J4YA039643 of a value of over twenty thousand dollars and under one hundred thousand dollars by dealing with said property contrary to an agreement under which the Defendant held the property and in a manner that involved substantial risk of loss to the 157th District Court, the owner, of said property by not abiding by the conditions in the replevy bond and chapter 59.02 of the Code of Criminal Procedure by failing to return the motor vehicle to the court on the day of trial and by selling the vehicle and using the proceeds from the sale of the above referenced property to purchase a motor vehicle for Rhoda Daniels.

Appellant filed three pretrial motions challenging the indictment: a "Motion to Quash and Exception to Substance of the Indictment"; an "Amended Motion to

Quash and Exceptions to Substance of Indictment and Memorandum of Support”; and “Defendant’s Second Amended Motion to Quash and Exceptions to Substance of Indictment.” The court denied all three motions. Following the denial of the second amended motion, appellant entered a plea of “no contest” without an agreed-upon recommendation as to punishment. After reviewing the Pre-Sentence Investigation Report prepared by the Harris County Community Corrections Department, the trial court deferred a finding of guilt and assessed punishment at five years of community supervision. Appellant timely filed this appeal.

ANALYSIS

Appellant raises one issue on appeal: that the trial court erred in denying his motions to quash because, although he did sell the Mercedes and fail to return it to court, such conduct was not criminal. Appellant contends that the indictment does not demonstrate that he engaged in any criminal conduct because it contains several “legal impossibilities.” Appellant asserts that, contrary to allegations contained in the indictment: (1) he, not the 157th District Court, is the actual owner of the Mercedes; (2) he did not have a fiduciary duty; and (3) there was no substantial risk of loss because of the existence of the court’s replevy bond. Appellant argues that these facts render the indictment “fatally flawed.”

Whether an indictment is sufficient is a matter of law. *Smith v. State*, 309 S.W.3d 10, 13 (Tex. Crim. App. 2010). We therefore review a trial judge’s ruling on a motion to quash the indictment *de novo*. *Id.* at 13–14. “A motion to quash challenges whether the charging instrument alleges ‘*on its face*’ the facts necessary to show that the offense was committed, to bar a subsequent prosecution for the same offense, and to give the defendant notice of precisely what he is charged with.” *Laurent v. State*, 454 S.W.3d 650, 653 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (quoting *DeVaughn v. State*, 749 S.W.2d 62, 67 (Tex. Crim. App.

1988)).

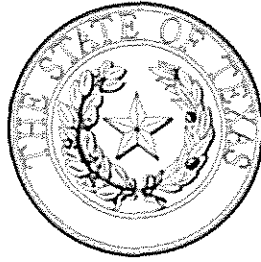
Appellant is not challenging whether the elements of the offense are properly stated, but rather is attempting to negate the elements by demonstrating that the allegations are not true. This is not a proper use of a pretrial motion to quash an indictment. A trial court has “no constitutional or statutory authority” to consider evidence raised by the defendant in order to refute the allegations in an indictment. *State v. Gollihar*, 2010 WL 3700790, at *2 (Tex. Crim. App. Sept. 22, 2010) (per curiam). Whether appellant is the owner of the car, whether he has a fiduciary duty, and whether there was a substantial risk of loss are questions that ultimately bear on appellant’s guilt, not on the sufficiency of the charging instrument. Appellant concedes that the indictment tracks the language of the statute and, therefore, is sufficient to charge an offense. However, appellant asked the trial court, and asks this court now, to improperly extend the scope of pretrial procedure in order to determine whether “the State’s cache of evidence . . . support[s] an element alleged in the indictment.” *State v. Boado*, 8 S.W.3d 15, 17 (Tex. App.—Houston [1st Dist.] 1999, pet. dismiss’d). To do so would be to “err[] grievously.” *Id.* (internal citations omitted). Accordingly, we conclude that the trial court did not err in denying appellant’s motion to quash.

We affirm.

/s/ Marc W. Brown
Justice

Panel consists of Justices Jamison, Donovan, and Brown.
Do Not Publish — TEX. R. APP. P. 47.2(b).

May 24, 2016



JUDGMENT

The Fourteenth Court of Appeals

LEIROI MICKLE DANIELS, Appellant

NO. 14-15-00111-CR

V.

THE STATE OF TEXAS, Appellee

This cause was heard on the transcript of the record of the court below. Having considered the record, this Court holds that there was no error in the judgment. The Court orders the judgment **AFFIRMED**.

We further order appellant pay all costs expended in the appeal.

We further order this decision certified below for observance.



THE STATE OF TEXAS

COUNTY OF HARRIS

I, Christopher A. Prine, Clerk of the Fourteenth Court of Appeals, of the State of Texas, at Houston, do hereby certify that the preceding **five (5)** pages contain a true and correct copy of the Court's **Memorandum Opinion and Judgment dated May 24, 2016** .

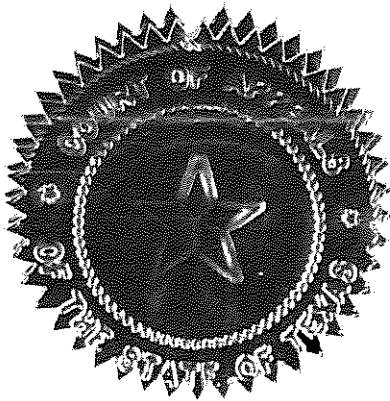
In the Cause No. 14-15-00111-CR

Leiroi Mickle Daniels, Appellant

v.

The State of Texas, Appellee

from Harris County, and now do file in my office.

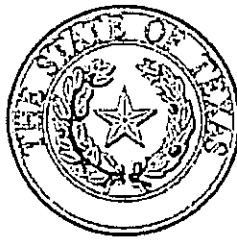


TO CERTIFY WHICH, I hereunto set my hand and affix the Seal of said Court of Appeals, at Houston, this March 29, 2017.

Christopher A. Prine, Clerk

By Robert M. Prine

Deputy



FILED

Chris Daniel
District Clerk

FEB 22 2017

Time: _____
Harris County, Texas

By _____
Deputy

MANDATE

The Fourteenth Court of Appeals

NO. 14-15-00111-CR

Leiroi Mickele Daniels, Appellant

Appealed from the 230th District Court
of Harris County. (Tr. Ct. No. 1399598).

v.

Memorandum Opinion delivered by
Justice Brown. Justices Jamison and
Donovan also participating.

The State of Texas, Appellee

TO THE 230TH DISTRICT COURT OF HARRIS COUNTY, GREETINGS:

Before our Court of Appeals on May 24, 2016, the cause upon appeal to
revise or reverse your judgment was determined. Our Court of Appeals made its
order in these words:

This cause was heard on the transcript of the record of the court below.
Having considered the record, this Court holds that there was no error in the
judgment. The Court orders the judgment **AFFIRMED**.

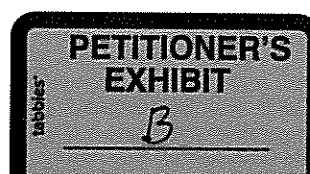
We further order appellant pay all costs expended in the appeal.

We further order this decision certified below for observance.

WHEREFORE, WE COMMAND YOU to observe the order of our said
Court in this behalf and in all things have it duly recognized, obeyed, and executed.

WITNESS, the Hon. Kem Thompson Frost, Chief Justice of our Fourteenth
Court of Appeals, with the Seal thereof affixed, at the City of Houston, February
22, 2017.

CHRISTOPHER A. PRINE, CLERK



13/974



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this March 13, 2017

Certified Document Number: 74073290 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF	§	
L. MICKELE DANIELS	§	CAUSE NO. 57321
STATE BAR CARD NO. 05374900	§	

JUDGMENT OF DISBARMENT

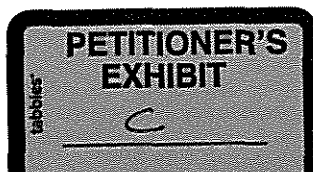
On the ____ day of _____, 2017, the Board of Disciplinary Appeals considered the Motion for Entry of Judgment of Disbarment filed in the above case by Petitioner, Commission for Lawyer Discipline of the State Bar of Texas, against Respondent, L. Mickle Daniels. The Board finds that:

- (1) It has continuing jurisdiction of this matter pursuant to Texas Rules of Disciplinary Procedure 8.05 ("TRDP");
- (2) The Fourteenth Court of Appeals affirmed Respondent, Daniels's, criminal conviction and issued a Mandate indicating that the decision was final on or about February 22, 2017;
- (3) Petitioner filed its Motion for Entry of Judgment of Disbarment on or about June 2, 2017, and served same on Respondent in accordance with TRDP 8.05;
- (4) Respondent's conviction for the commission of an Intentional Crime as defined by TRDP 1.06(T), for which he was sentenced in the 230th District Court of Harris County, Texas, has become final and is not subject to appeal;
- (5) Petitioner's Motion for Entry of Judgment of Disbarment should be granted.

Interlocutory Suspension

On the 2nd day of May 2016, the Board of Disciplinary Appeals entered an Interlocutory Order of Suspension, which included the following findings of fact and conclusions of law:

- (1) On or about November 23, 2013, Respondent was charged by Indictment with Misapplication of Fiduciary Property, in Cause No. 1339959 1399598, styled *The State of Texas v. Leiroy Mickle Daniels* in the District Court of



Harris County, Texas.

- (2) On or about January 21, 2015, an Order of Deferred Adjudication was entered in Case No. 139959801010, styled *The State of Texas v. Daniels, Leiroy Mickle*, in the 2301h District Court of Harris County, Texas, wherein Respondent pled nolo contendere to misapplication/Fiduciary/Finan 20k - 100k, a Third Degree Felony, in violation of Texas Penal Code § 32.45, and was placed on community supervision of for a period of five (5) years and ordered to pay \$212.00 in court costs.
- (3) Respondent, L. Mickle Daniels is the same person as the Leiroy Mickle Daniels who is the subject of the criminal case described above.
- (4) Respondent has appealed the criminal conviction.
- (5) This Board has jurisdiction to hear and determine this matter. Tex. R. Disciplinary P. 7.08(G) ("TRDP").
- (6) Respondent, L. Mickle Daniels, having pled nolo contendere to Misapplication/Fiduciary/Finan 20k — 100k, has been placed on deferred adjudication for the commission of an Intentional Crime as defined by TRDP 1.06(T).
- (7) Respondent has also been placed on deferred adjudication for the commission of a Serious Crime as defined by TRDP 1.06(AA).
- (8) Having pled nolo contendere to and having been placed on deferred adjudication for the commission of an Intentional and Serious Crime and having appealed such judgment, Respondent, L. Mickle Daniels' license to practice law in Texas shall be suspended during the appeal of his criminal conviction. TRDP 8.04.
- (9) The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final. TRDP 8.05.

Disbarment

The Board has determined that disbarment of the Respondent is appropriate. It is, therefore, accordingly, ORDERED, ADJUDGED, AND DECREED that Respondent, L. Mickle Daniels, State Bar No. 05374900, be and he is hereby DISBARRED from the practice of law in the State of Texas, and his license to practice law in this state be and is hereby revoked.

It is further ORDERED, ADJUDGED and DECREED that Respondent, L. Mickle Daniels, is hereafter permanently prohibited, effective immediately, from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED Respondent, L. Mickle Daniels, shall immediately notify each of his current clients in writing of this disbarment. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned monies and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further ORDERED to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein.

It is further ORDERED Respondent, L. Mickle Daniels, shall, on or before thirty (30) days from the signing of this judgment by the Board, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further ORDERED to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414

Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice has received written notice of the terms of this judgment.

It is further ORDERED that Respondent, L. Mickle Daniels, if he has not already done so, immediately surrender his Texas law license and permanent State Bar Card to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further ORDERED that a certified copy of the Petition for Compulsory Discipline on file herein along with a copy of this Final Judgment of Disbarment be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

Signed this _____ day of _____ 2017.

Chair Presiding
BOARD OF DISCIPLINARY APPEALS