

**COURT OF APPEALS OF GEORGIA**

**RETURN NOTICE**

June 15, 2015

To: Keith E. Adams, Esq., 315 West Ponce de Leon Avenue, Suite 602, Decatur, Georgia 30030

Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

Court of Appeals Case Number and Style: \_\_\_\_\_

Your document(s) is (are) being returned for the following reason(s).

- There is no case pending in the Court of Appeals of Georgia under your name.**
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate.** An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on \_\_\_\_\_.** The Court of Appeals \_\_\_\_\_ . The remittitur issued on \_\_\_\_\_ divesting this Court of jurisdiction. The case decision is therefore final.
- Your Appellee's Brief is enclosed.**
- Electronic filing is mandatory in this Court. The following Rule 46 became effective January 1, 2015.**

**XXII. ELECTRONIC FILING OF DOCUMENTS**

**Rule 46. Electronic Filing of Documents.**

**Counsel is required to use the Court's electronic filing system and to follow the policies and procedures governing electronic filing as set forth in the Court's electronic filing instructions. The Clerk of Court may grant a request for exemption from mandatory electronic filing for good cause shown. An adverse decision by the Clerk of Court may be appealed by motion to the Court via a paper filing.**

**Rule passed October 21, 2014 - effective January 1, 2015**

**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

2015 JUN 17 10:44:21  
COURT OF APPEALS  
STATE OF GEORGIA

**STATE OF GEORGIA,** )  
    **Appellant,** )  
 )  
    **Vs.** )  
 )  
**JOSHUA DIONTE TITTLE,** )  
    **Appellee.** )

**Docket No.: A15A1808**

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**BRIEF OF APPELLEE**

Appellee:  
Joshua Dionte Tittle  
17203 Waldrop Cove  
Decatur, Georgia 30334

Attorney for Appellee:  
Keith E. Adams  
Georgia Bar No. 003655

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## STATEMENT OF FACTS

Joshua Tittle was arrested and charged with the offense of DUI in the early morning hours of May 9, 2014. Clayton County Officer J. Nicholson arrived on the scene of a single vehicle accident, met with the driver (Joshua Tittle), who was on crutches, and inquired about the accident. After speaking to Mr. Tittle and performing one Field Sobriety Test (the Horizontal Gaze Nystagmus), Officer Nicholson arrested Tittle and charged him with DUI. Mr. Tittle was read the implied consent notice, to which he declined to submit to any state administered test of his blood.

Mr. Tittle had previously on November 24, 2004 been arrested and charged with DUI, open container, and failure to maintain lane. In that case, after he was arrested, Mr. Tittle was read implied consent for suspects under 21 (because he was 19 at the time), at which time he agreed to give a breath sample with the resulting readings of .046 and .049 respectively. (MT Vol. 1 page 3 lines 21–25).

The State sought to introduce evidence of Mr. Tittle's 2004 DUI, and evidence that he had previously submitted to the state administered test, arguing that those facts would prove knowledge, plan, and absence of mistake or accident in his current case where he had declined to take the state administered test.

## **ARGUMENT AND CITATION TO AUTHORITY**

The Trial Court was correct in denying the State's request to introduce prior bad acts pursuant to O.C.G.A. 24-4-417. The Court's ruling, that evidence of the Defendant's prior DUI violation could only be introduced by the State in rebuttal, and not as part of its' case in chief to show knowledge, plan or absence of mistake or accident in regard to Defendant's refusal to submit to the State's test is in keeping with the current law.

O.C.G.A. 24-4-417, which specifically provides for the introduction of DUI similar transaction evidence, provides that,

Evidence of the commission of another violation of Code section 40-6-391 on a different occasion by the same accused shall be admissible when..the accused refused in the current case to take the state administered test required by Code Section 40-5-55 and such evidence is relevant to prove knowledge, plan, or absence of mistake or accident.

The States' argument that Mr. Tittle's prior DUI would go to prove knowledge, plan, and absence of mistake or accident, ignores the fact that any evidence of intent or knowledge would be irrelevant insomuch as these issues are not elements of DUI less safe, which is a general intent crime. Simply put, there is

no requirement of “knowledge that one is driving while under the influence”. See Prine v. State, 237 Ga. App. 679, 680(2)(a) (1999) (to establish DUI, the State must prove (1) driving; (2) after consuming alcohol; (3) to the degree one is less safe).

Additionally, in Frost v. State, (A14A0730), (July 15, 2014), the Court clarified O.C.G.A., stating, “OCGA 24-4-417 (a)(1) provides that prior DUI evidence is admissible when the defendant “refused in the current case to take the state administered test required by Code Section 40-5-55. It further provides that the evidence must then be “relevant to prove knowledge, plan, or absence of mistake or accident. Under this provision, if

The defendant took and failed the [state administered] test in the prior DUI and the defendant refused the test in the subject case, [and] if the defendant at trial attempts to suggest that he did not take the test because he did not understand it, or he did not know that he could take a test, or that he would never take such a test, [then] the prior DUI in which the defendant took and failed the test would be admissible to prove knowledge, plan or absence of mistake or accident.”

The State relies upon Frost without a full understanding of the holding in Frost. In the instant case, Mr. Tittle did not take the test, and in the previous DUI,

he did (and failed). In order to admit the prior DUI, Mr. Tittle would have to assert some reason as to why he did not take the test in the current case.

### CONCLUSION

For the foregoing reasons, Appellant requests that the appeal be DENIED and respectfully requests this Court to AFFIRM the ruling of the Trial Court.

This 10<sup>th</sup> day of June, 2015.

Respectfully submitted,

KEITH ADAMS & ASSOCIATES, LLC



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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for opposing party in the foregoing matter with a copy of the foregoing

1. BRIEF OF APPELLEE

by depositing said copy in the United States Mail in a properly addressed envelope with adequate postage thereon to wit:

Amanda Flora  
Assistant Solicitor General  
9151 Tara Boulevard  
Suite 3SL01  
Jonesboro, Georgia 30236

This 10<sup>th</sup> day of June, 2015.

Respectfully submitted,

KEITH ADAMS & ASSOCIATES, LLC



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