

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

October 1, 2015

To: Mr. Kangoma Celestine, GDC1001134184, Dooly State Prison, Post Office Box 750,
Unadilla, Georgia 31091

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. The mailing address for the Supreme Court of Georgia is: 244 Washington Street, S.W., Suite 572, Atlanta, Georgia 30334.
- 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 mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia.** The address of the Clerk of the _____ is: _____
- Per your letter, you do have legal representation. In this Court, as long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court. I am returning your documents to you.**
- A request for an out-of-time appeal should be made to the trial court from which you are appealing.** If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

09-22-2015

To the CLERK COURT of Appeals
of Georgia
47 TRINITY AVENUE, suite 501
Atlanta, GA 30334

2015 SEP 23 11:59
COURT OF APPEALS

DEAR CLERK HELLO.

Please I don't have a good English with me in this time so I make my best OR STRONGLY FOR I explain very good to the court of Appeals OR to the 3 Judges Panel who have my case in the court room, FOR their remember what was the really situation OR problem FROM the beginning to the end in this case, because this court make many-many ERRORS on me by the liar FROM the alleged victim family. FOR that I make myself prudence FOR I send to you OR to the court of Appeals my Testimony story FOR you OR the Judges examine OR Review very good this case between my testimony and the victim testimony. Wh lying and who talking the TRUTH, so Dear clerk I sent to you before this document on 09-03-2015 so the court return to me back because I don't sent the certificate of service FROM the superior court. Now I send to you OR to the court the proof certificate copy - so in this case I have my new lawyer who represents me in this case, ~~so~~ so please if I make this prudence - myself FOR I send to you my testimony because this last court don't have any paper work FROM my testimony and my last attorney never talking my story in the court room, I never ever hear that in the court room and the superior court reject my credibility on me in

Dear CLERK OR the court of Appeals this case was been FROM 2010 by the Judge BACKER, and I talking that time to my last Attorney FOR she Find the victim Family and bring them to the court but she don't do that FOR me, she said to me their can't Find this Family. so this Family was DISAPPEAR when their saw I was ARRESTED then their Run AWAY FROM GEORGIA, so FROM 2010 their teaching the GIRL How she can lie on me, because their can't Find this man EMILE NITUNZI who was EVELINE BOYFRIEND. FOR this situation on me please my people in court of - Appeal Review OR EXAMIN very good this document you will see where is the Rong.

Dear CLERK if you Finish Review this Document - make copy and Return to me please. so in this cas I believe to the lord God who is the very good witness FOR the people and myself in this case.

FOR that in this case on me I lieve the people in the - court Room of Appeals to the Hand of the LORD GOD who is the SAVIOR FOR everybody.

The seconde problem in this case in the court Room was - completely bick confision ~~between~~ between the Judge and my interpret, the Judge asking many time what the the interpret said I don't understand good what she said this was the second problem between me the judge and my interpret.

in this case on me, I don't have any opportunity in this case on me by the questions I asking the court by my last lawyer. so my people in the court of Appeals if I am in this prison because I don't have english with me, and I don't have a good support or somebody who can help me very good in this case and I don't know the law process in the unite state court or judgment, FOR that the people said this one is somebody who can go in free - prison. if I am in this prison. because my last attorney or the court don't make strong FOR their ~~find~~ Find the the two mans was in the House with me there name is JHON MINANU and EMILE NITUNZI who was EVELINA Boyfriend. so if you review very good the document - I send to you, you will see How the's court Rong on me and de JURY FOR their put me in this - innocent imprisonment. please if I make myself strong because I am longer in prison I don't know why so please my court of Appeals I came here in the state - because I Fear the problem in my country. and I have my case to the immigration court I can't looking any problem on my ASLYM PAPERWORK NEVER. FOR that I send to you everything FOR you Review with my New lawyer this case FOR me

Thank you and
Respectfully submitted
Sincerely
celestine kangoma

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA)
)
v.) CASE NO. 12CR1182-6
)
CELESTINE KANGOMA)
 Defendant.)

ORDER DENYING MOTION FOR NEW TRIAL

Defendant’s Motion for New Trial in the above-styled case having come before this Court for consideration on the 28th day of January, 2015, and the Court having heard testimony and argument presented by both parties, and having considered the same as well as the entire record, the Court finds as follows:

FACTS

In the fall of 2010, when Eveline Manirambora was 11 years-old, Defendant came into her bedroom during the night, touched her all over, including on her breasts and on her vagina, and attempted to rape her. Eveline lived with her mother and her brother when Defendant came to live with them. (T. 45, 74, 90). Eveline stayed in her mom’s room and Defendant stayed in her brother’s bedroom. (T. 46, 92). Eveline’s mom worked at night and left Eveline and her brother with Defendant.

At around 10:00 or 11:00 at night, Defendant went into Eveline’s

bedroom while she was sleeping and: “He tried to touch my titties and like that and all that stuff.” (T. 48, 94). Defendant touched her “titties” with his hands. (T. 49). Defendant came to her bedroom three times and the last time: “He try to go down on me. He tried to touch me right there and I push him. And that’s when I started yelling and my brother came.” (T. 50-51, 67, 77).

Eventually, Eveline told her mother what Defendant did to her. (T. 59, 93). Eveline underwent a forensic interview on February 1, 2012. (T. 127). During the interview, Ms. Wood, the forensic interviewer, used anatomical drawings and dolls to fully understand what Eveline was telling her Defendant had done. (State’s Exhibit 3-A, 4, 5). At Eveline’s request, the interview was conducted in English; however, it is apparent from the recording that Eveline’s accent, dialect, and the fact that she spoke very fast made it difficult at times to hear and understand everything Eveline was saying. (T. 130). Therefore, Ms. Wood repeated a lot of what Eveline was saying just to make sure she heard correctly and Eveline was emphatic about correcting Ms. Wood when she incorrectly restated what she thought Eveline had said. (T. 130, 132; State’s Exhibit 3-A).

During the forensic interview, Eveline identified the parts of her body, including her breasts and vagina, where Defendant touched her with his hand. (T. 135, State’s Exhibits 4). She also identified Defendant’s penis and

stated that Defendant tried to put his penis in her vagina. (T. 136; State's Exhibit 3-A). Defendant was charged with child molestation for placing his hand onto or upon Eveline's sex organ, child molestation for attempting to place his male sex organ onto and upon Eveline's sex organ, sexual battery against a child under 16 for placing his hand on Eveline's anus, and sexual battery against a child under 16 for placing his hand onto and upon Eveline's breast. The jury found Defendant guilty of both child molestation counts and the sexual battery against a child under 16 involving placing his hand on Eveline's breast.

Sufficiency of the Evidence

The Court finds the evidence as summarized above was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Defendant was guilty of the crimes for which he was convicted. Jackson v. Virginia, 443 U. S. 307 (1979). The Court notes that the testimony of a single witness is "sufficient to establish a fact." OCGA 24-4-8; Colzie v. State, 289 Ga. 120, (2011). Here, the victim testified as to what happened to her. She also made an outcry to her mother, the emergency room doctor, the police, and a forensic interview was conducted. In each instance, the victim identified Defendant as the person who touched her and attempted to rape her.

The Court finds that although it was difficult at times to understand the victim and some of the details of her story differed, the issue was simply one of the victim's credibility and "[d]ecisions regarding credibility are uniquely the province of the trier of fact." Cleveland v. State, 285 Ga. 142, 147 (2009).

Therefore, the Court finds that there was sufficient evidence for the jury to find Defendant guilty beyond a reasonable doubt of two counts of child molestation and one count of sexual battery of a child under 16. Accordingly, Defendant's motion for new trial based on the sufficiency of the evidence is denied.

The Grant of a New Trial on General Grounds is not Warranted.

OCGA § 5-5-20 authorizes the Court to grant a new trial "[i]n any case when the verdict of the jury is found contrary to evidence and the principles of justice and equity[,]" and OCGA § 5-5-21 empowers the Court to grant a new trial "where the verdict may be decidedly and strongly against the weight of the evidence even though there may appear to be some slight evidence in favor of the finding." These statutes "afford the trial court broad discretion to sit as a 'thirteenth juror' and weigh the evidence on a motion for new trial alleging these general grounds. [Cits.]" Hartley v. State, 299 Ga. App. 534 (3) (2009).

Here, after considering the entire record and after weighing the evidence independently as a “thirteenth juror,” the Court finds that the weight of the evidence preponderated heavily in favor of the verdict and, further, that the verdict was not contrary to the evidence or the principles of justice and equity. Therefore, in the exercise of its sound discretion, this Court denies Defendant’s motion for new trial on the general grounds set out in OCGA §§ 5-5-20 and 5-5-21; Alvelo v. State, 288 Ga. 437 (1) (2011).

CONCLUSION

The jury’s verdict was sound. The Court finds that Defendant is not entitled to a new trial on any of the grounds raised.

IT IS HEREBY ORDERED that Celestine Kangoma’s motion for new trial is denied on all grounds.

This, the _____ day of January, 2015.

MICHAEL E. HANCOCK, SENIOR JUDGE
SUPERIOR COURT OF DEKALBCOUNTY
STONE MOUNTAIN JUDICIAL CIRCUIT

cc:
Deborah D. Wellborn
Assistant District Attorney
ddwellborn@dekalbcountyga.gov

Shari Gunnin
Attorney for Defendant
shari.gunnin@gmail.com