

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

December 14, 2015

To: Rosemary M. Greene, Esq., Gordon County Division, Post Office Box 1478, Calhoun, Georgia 30703

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).

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- 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 _____, is also 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
FOR THE STATE OF GEORGIA**

RANDALL LEE JONES,	:	CASE NO. A16A0523
	:	
Appellant	:	
	:	
VS.	:	ON APPEAL FROM THE
	:	SUPERIOR COURT OF
	:	GORDON COUNTY
STATE OF GEORGIA,	:	
	:	
Appellee	:	

BRIEF ON BEHALF OF APPELLEE

ROSEMARY M. GREENE
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CHEROKEE JUDICIAL CIRCUIT

STATE BAR NUMBER 343457

SHARON M. FOX
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CHEROKEE JUDICIAL CIRCUIT

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GORDON COUNTY

IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

RANDALL LEE JONES, : CASE NO. A16A0523
: :
Appellant : :
: :
VS. : ON APPEAL FROM THE
: SUPERIOR COURT OF
: GORDON COUNTY
STATE OF GEORGIA, : :
: :
Appellee : :

PART ONE

STATEMENT OF FACTS

On December 5, 2013, the Appellant, Randall Lee Jones, went to Tweety's Automart Rentals, LLC. in Chattanooga, Tennessee, and entered into a rental agreement for a motor vehicle with Todd Roger Watkins. (TT 35-38, 62, S1). He agreed to bring the vehicle back around December 8th or 9th. (TT 38-39). The Appellant was allowed to drive the motor vehicle 800 miles in the contract. (TT 38.) The Appellant had indicated that he was going to see his son. (TT 39). In addition, the Appellant completed an information card in the presence of Mr. Watkins. (TT 40, S2). The card included personal contact numbers for the Appellant. (TT 40-41, S2). He also provided an emergency contact and telephone number. (TT 41, S2).

When the Appellant did not return the vehicle back to Tweety's Automart Rental, LLC. on December 8th or 9th, Mr. Watkins began to call and text the Appellant and telephone the emergency contact. (TT 40-42). He continued to try to contact the Appellant over the next day and was not able to make contact with the Appellant. When he was unable to contact the Appellant or get a response, Mr. Watkins contacted the East Ridge Police Department and reported the vehicle as stolen. (TT 43, 47). After a few days, he also hired a repossession company to help locate the vehicle. (TT 43, 47).

On December 11, 2013, Trooper Shawn Prather was bringing another trooper and his vehicle to Gordon County. (TT 49-50). While he was coming back to Gordon County, he heard Gordon County 911 give a lookout on Mr. Watkins' vehicle. (TT 50). He heard the physical description of the motor vehicle, a description of the location the vehicle was at, and the tag number. (TT 50). Trooper Prather realized he had just passed the motor vehicle fitting the 911 description. (TT 50). He pulled off to the side of the road and let the motor vehicle pass him and then he stopped the motor vehicle. (TT 50). The stop was made on Interstate 75, around mile marker 309 in Gordon County. (TT 50-51).

Trooper Prather confirmed the vehicle matched the dispatch. (TT 51, 53). The Appellant was the driver of the motor vehicle and was traveling alone. (TT 52). Since Trooper Prather had other obligations, he contacted another Trooper to process the motor vehicle stop. (TT 52).

Trooper Rodney Curtis was contacted to come to the scene of the motor vehicle stop. He communicated with Hamilton County in Chattanooga, Tennessee that the motor vehicle in question was located in Gordon County. (TT 55). Trooper Curtis also contacted Mr. Watkins. (TT 43, 55). He then transported the Appellant to the Gordon County jail. (TT 55-56).

When Mr. Watkins collected his vehicle, he noted the mileage on the odometer was in excess of the 800 miles that the Appellant was allowed to drive in the contract. (TT 44). The odometer indicated that the Appellant had driven 5109 miles which was well over the 800 miles he had agreed to. (TT 45, S3).

The only thing the Appellant paid was the deposit. (TT 45). He never paid the balance of the contract or reimbursed Mr. Watkins' company for the additional miles he drove on the motor vehicle. (TT 45). The Appellant only collected his personal property. (TT 46-47).

The Appellant was indicted for one count of Theft by Conversion and one count of Theft by Bringing Stolen Property into the State. (R 5-8). The case was

tried by a jury before the Honorable Suzanne H. Smith on May 7th and 8th, 2014. (TT 1-93). The Appellant testified at trial and indicated that he signed the rental agreement and then drove to California to see his son. (TT 62). He indicated that he did not get to see his son and only stayed in California a couple of hours before coming back. (TT 62). He indicated that he had run out of gas in Atlanta, Dekalb County. (TT 63). He had not called the victim. (TT 63, 65). He also acknowledged that he had put over 5,000 miles on the motor vehicle. (TT 65).

The State submitted a written request on venue requesting that the Trial Court charge O.C.G.A. § 16-8-11. (R 21-22). The Trial Court gave the jury that charge. (TT 78).

The jury found the Appellant guilty of both counts. (TT 90). The Appellant was sentenced to a five year sentence to serve two years in-custody with both counts running concurrent with each other. (TT 98, R 27-30).

PART TWO

ARGUMENT AND CITATION OF AUTHORITY

I.

THE JURY PROPERLY RETURNED GUILTY VERDICTS ON BOTH THE THEFT BY CONVERSION AND THEFT BY BRINGING STOLEN PROPERTY INTO THE STATE COUNTS ON THE FACTS OF THIS CASE AND THE VERDICTS ARE NOT MUTUALLY EXCLUSIVE.

The Appellant was convicted of Theft by Conversion, O.C.G.A. § 16-8-4 and Theft by Bringing Stolen Property in the State, O.C.G.A. § 16-8-9. (TT 90). The Appellant argues on appeal that the verdicts are mutually exclusive and that his convictions should be reversed. In support of this contention, the Appellant cites Jackson v. State, 276 Ga. 408 (2003). Jackson, supra, was overruled by the Georgia Supreme Court in Springer v. State, 297 Ga. 376 (2015). In addition, the Appellant notes U.S. v. Powell, 469 U.S. 57, 69 (1984). Springer, supra at 378 states, “In Powell, supra, 469 U.S. at 69 n. 8, 105 S.Ct. 471, the Supreme Court noted that nothing in that opinion was “intended to decide the proper resolution of a situation where a defendant is convicted of two crimes, where a guilty verdict on one count logically excludes a finding of guilt on the other.”

Although the State would acknowledge that “mutually exclusive verdicts” is a concept in Georgia law, the State disputes that the counts are mutually exclusive on the facts of this case. On December 5, 2013, the Appellant went to Tweety’s Automart Rentals, LLC. in Chattanooga, Tennessee, and entered into a rental agreement for a motor vehicle with Todd Roger Watkins. (TT 35-38, 62, S1). He agreed to bring the vehicle back around December 8th or 9th. (TT 38-39). The Appellant did not bring the vehicle back as agreed and Mr. Watkins reported the vehicle stolen. (TT 43, 47). On December 11, 2013, the Appellant was arrested because he was driving the vehicle in Gordon County. (TT 50-53).

O.C.G.A. § 16-8-11 provides, “In a prosecution under Code Sections 16-8-2 through 16-8-9 and 16-8-13 through 16-8-15, the crime shall be considered as having been committed in any county in which the accused exercised control over the property which was the subject of the theft.”

The State specifically requested that the Trial Court charge O.C.G.A. § 16-8-11 to the jury. (R 70, R 21-22). The Trial Court charged the jury as follows: “Now, the law provides that criminal actions shall be tried in the county in which the crime was committed except as otherwise provided by

law, and venue is a jurisdictional fact that must be proven just as any other element of the offense, and venue may be proved by direct or circumstantial evidence.

Now, in this case, for prosecution of a charge of theft by conversion or theft by bringing stolen property into the state, for purposes of venue the crime shall be considered as having been committed in any county in which the accused exercised control over the property which was the subject of the theft.” (TT 78, L10-19).

Trooper Prather confirmed the vehicle matched the dispatch. (TT 51,53). Furthermore, Trooper Prather put the Appellant as the driver of the motor vehicle and traveling alone. (TT 52). As the Appellant was the driver of the vehicle at issue in this case, and as the act of driving is certainly exercising control over property, venue is proper in Gordon County. As venue is proper in Gordon County, the Appellant can be prosecuted for both theft by conversion and theft by bringing stolen property into the state and the verdict in this case is not mutually exclusive under these facts.

That is, on these facts, a jury could logically find that the Appellant converted the vehicle to his own use, Theft by Conversion, and also concluded that he brought that stolen property into the state, Theft by

Bringing Stolen Property into the State. Because venue is proper, “in any county in which the accused exercised control over the property which was the subject of the theft”, there is nothing mutually exclusive about the jury’s decision to convict on both counts.

Furthermore, as the Trial Court ran the sentences concurrent the Appellant was not harmed by the verdict. (TT 98, R 27-30).

PART THREE

CONCLUSION

For all of the above and foregoing reasons, Appellee respectfully requests that the Appellant's Enumeration of Error be rejected and his appeal be denied and that the verdict and sentence in the case at bar be affirmed as the correct, fair, and impartial result.

Respectfully submitted,

This 10th day of December, 2015.

ROSEMARY M. GREENE
DISTRICT ATTORNEY
CHEROKEE JUDICIAL CIRCUIT

STATE BAR NO. 343457



SHARON M. FOX
SENIOR ASSISTANT DISTRICT ATTORNEY
CHEROKEE JUDICIAL CIRCUIT
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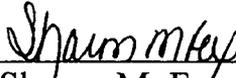
CERTIFICATE OF SERVICE .

This is to certify that I have served the above and foregoing Brief of Appellee upon the attorneys for the Appellant by placing a copy of same in the United States Mail in a properly addressed envelope with sufficient postage affixed thereto and addressed as follows:

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This 10th day of December, 2015.



Sharon M. Fox
Senior Assistant District Attorney
Cherokee Judicial Circuit