

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

April 6, 2015

To: Mr. Leonard Hopkins, GDC420549, Hancock State Prison, Post Office Box 339, Sparta, Georgia 31087

Case Number: _____ Lower Court: _____ County Superior Court _____

Court of Appeals Case Number and Style: A14A2277. Leonard Hopkins v. The State

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 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: _____
- As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney, Timothy Hoffman, Esq., 120 West Trinity Place, Suite 310, Decatur, Georgia 30030, 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 the Motion for Reconsideration 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.

April 2, 2015

RECEIVED IN OFFICE

2015 APR -6 PM 3:46

CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA

DEAR SIR (Ma'm)

ENCLOSED ARE IS my motion for RECONSIDERATION AND documents that state ~~my~~ my points. If you don't mind will you MAKE COPIES of these documents AND RETURN them BACK to me. I SENT them to PROVE that the judge AS WELL AS the DA KNEW of the ARGUMENTS I AM PRESENTING. I JUST NEED the JUSTICES TO SEE the SIGNATURE of the judge AND the high lighted points. THANK you for your ASSISTANCE AND may God bless you.

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CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA

Sincerely yours,

P/S

Could you SEND me
INFORMATION to ASSIST
with my habeous corpus.
I AM without COUNSEL, so
I FILED PRO SE.

LEONARD HOPKINS
420549

COURT OF APPEALS
OF GEORGIA

1492 1 0 1 1

LEONARD HOPKINS

DOCKET # A14A2277

v

THE STATE OF GEORGIA

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COURT CLERK
CLERK COURT OF APPEALS OF GA

DISMISSAL
1492 1 0 1 1

MOTION FOR RECONSIDERATION

COMES NOW, the defendant, LEONARD CARL HOPKINS, PRO SE REQUESTS that this HONORABLE COURT RECONSIDERS ITS DECISION TO AFFIRM the defendant's CONVICTION. IN SUPPORT of the defendant's REQUEST, HE CITES the following FACTS AND LAWS;

I

THE EVIDENCE THAT WAS PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THIS CONVICTION.

A) THE STATE IS USING THE POSSIBLE FACT THAT THE DEFENDANT COULD BE GUILTY OF THE TRAFFIC OFFENSES, SO THEREFORE HE IS GUILTY OF POSSESSION CHARGE ALSO. THERE WAS NO EVIDENCE PRESENTED THAT PUT MR. HOPKINS IN POSSESSION OF COCAINE. THE INITIAL REASONING BEHIND THE TRAFFIC STOP WAS A DEFECTIVE TAIL LIGHT, THEREFORE THERE WAS NO REASON FOR THE OFFICER TO BELIEVE THAT DRUGS WERE BEING SOLD OR TRANSPORTED.

B) DURING TRIAL, MR. LITTLE TESTIFIED THAT HE AND J.T. PHYSICALLY PUT MR. HOPKINS IN BED, THEN J.T. TOOK MR. LITTLE HOME. MS. LEWIS CORROBORATED THAT BY TESTIFYING THAT WHEN SHE WAS FINALLY ABLE TO GET IN THE HOUSE;

BECAUSE SHE HAD GIVEN J.T. HER KEYS, SHE FOUND MR. HOPKINS IN BED ASLEEP. OFFICER CANIPE TESTIFIED THAT WHEN SHE SAW THE INDIVIDUAL WALK OFF AND SHE APPROACHED THE BACK YARD, SHE HEARD FOOTSTEPS RUNNING AWAY FROM THE HOUSE AND SHE WAS POSITIVE THAT THE INDIVIDUAL DIDN'T GO IN THE HOUSE. ALL THESE ARE FACTS THAT WERE STATED BY TWO STATE WITNESSES AND ONE DEFENSE WITNESS THAT ALL RELATED TO EACH OTHER AND MR. HOPKINS ALIBI. THE STATE IS TRYING TO USE THE INCONSISTENCIES OF MS. LEWIS' TESTIMONY OF OUR PERSONAL RELATIONSHIP AS EVIDENCE. THE BASIS OF THESE CHARGES HAS NOTHING TO DO WITH WHERE MR. HOPKINS LIVES, WHERE YOU PICKED HIM UP AT OR WHETHER SHE IS MY GIRL FRIEND OR NOT,

C) MS. LEWIS STATED IN HER TESTIMONY THAT WHEN SHE GOT INTO THE HOUSE, MR. HOPKINS WAS IN THE BED ASLEEP AND THAT THE ONLY WAY HE COULD HAVE GOTTEN IN WAS BY THE KEY, WHICH WAS ON THE KEY CHAIN WITH THE VAN KEYS, THAT SHE GAVE TO J.T. MR. LITTLE TESTIFIED THAT HE AND J.T. PHYSICALLY TO-CARRIED MR. HOPKINS INTO THE HOUSE AND PUT HIM IN BED, THEN J.T. PRE TOOK MR. LITTLE HOME. THEREFORE EXPLAINING HOW MR. HOPKINS GOT IN THE HOUSE. THE STATE PRODUCED NO EVIDENCE TO DISPUTE THESE FACTS. EACH WITNESS GAVE UNDISPUTED TESTIMONY SUPPORTING MR. HOPKINS ALIBI THAT HE WAS HIGHLY INTOXICATED AND TAKEN TO MS. LEWIS' HOUSE AND PUT IN THE BED. THE STATE OFFERED NO EVIDENCE TO DISPUTE OR QUESTION THESE FACTS. TO DISPUTE THIS FACT THE STATE TRIES TO MAKE MS.

LEWIS' TESTIMONY A LIE BECAUSE OF HER INCONSISTENCIES ABOUT OUR RELATIONSHIP. HER TESTIMONY ABOUT THE FACTS OF THIS CASE WERE CORROBORATED BY OTHER WITNESSES.

II

THE LAW STATES THAT; IN A DRUG POSSESSION CASE BASED UPON WHOLLY CIRCUMSTANTIAL EVIDENCE, THE STATE MUST ADDUCE EVIDENCE ESTABLISHING A "MEANINGFUL CONNECTION" BETWEEN THE DEFENDANT AND THE DRUGS. "MERE PRESENCE, WITHOUT PROOF OF PARTICIPATION, IS INSUFFICIENT TO SUPPORT A CONVICTION. RATHER, THE STATE MUST SHOW THAT THE DEFENDANT KNOWINGLY HAD THE POWER AND INTENT TO EXERCISE CONTROL OVER THE DRUGS. THE INITIAL REASONING BEHIND THE STOP WAS A DEFECTIVE TAIL LIGHT, THE VAN WASN'T OBSERVED DOING ANY TYPE OF DRUG TRANSACTION, MR. HOPKINS WAS NOT FOUND AT THE SCENE OF THE TRAFFIC STOP, THEREFORE THERE IS NO WAY TO PROVE THAT MR. HOPKINS HAD KNOWLEDGE OR POWER OR CONTROL OF DRUGS BEING POSSESSED IN THE VAN. STEVENS V STATE, 245 GA APP 237, 238 (1) 537 S.E. 2d 688 (2000) U.S. V BIRMLEY 529 F.2d 103, 107-08 (6TH CIR. 1976).

A) THE STATE IS BASING MR. HOPKINS PRESENCE ON THE OFFICER'S TESTIMONY THAT THE MAN SHE SAW EXIT THE DRIVER'S SIDE MATCHED THE PHOTO AND PHYSICAL DESCRIPTION CONTAINED ON HOPKINS' DRIVER'S LICENSE. MR. HOPKINS HASN'T HAD A DRIVER'S LICENSE IN 15-20 YEARS, SO THAT DESCRIPTION AND PHOTO ARE VERY DIFFERENT. ALSO IN COMMON SENSE, THERE IS NO WAY FOR OFFICER CAMPE TO VISUALLY DETER-

MINE THE FACIAL FEATURES OF AN INDIVIDUAL AT 3:00 AM IN THE MORNING IN A BACKYARD AT LEAST 25-30 YARDS FROM HER. THE CAMERA ON HER CAR HAS A LIGHT ON IT AND IT DIDN'T DISTINGUISH A CLEAR PHOTO. THE STATE IS SAYING THAT THE JURY MADE A DETERMINATION BY WATCHING THE VIDEO, WHICH IS TOTALLY UNTRUE BECAUSE WHILE THE JURY WAS DELIBERATING THEY CAME BACK FROM DELIBERATIONS AND ASKED TO SEE THE VIDEO ~~ONE~~ AGAIN. BUT THE JUDGE DENIED IT SAYING HE DIDN'T WANT THEM FOCUSING ON ONE SPECIFIC PART OF THE EVIDENCE. BECAUSE THE JURY MADE THIS REQUEST PROVES THAT THERE WAS DOUBT AS TO MR. HOPKINS GUILT.

B) THE STATE IS CONTENDING THAT MR. HOPKINS WAS THE DRIVER OF THE VEHICLE, THEREFORE, HE POSSESSED THE CONTRABAND FOUND IN THE VEHICLE. BUT THE LAW STATES; THE EQUAL ACCESS RULE, AS IT APPLIES IN THE AUTOMOBILE CONTEXT, IS MERELY THAT EVIDENCE SHOWING THAT A PERSON OR PERSONS OTHER THAN THE OWNER OR DRIVER OF THE AUTOMOBILE HAD EQUAL ACCESS TO CONTRABAND FOUND IN THE AUTOMOBILE MAY OR MAY NOT DEPEND UPON THE STRENGTH OF THE EVIDENCE, OVERCOME THE PRESUMPTION THAT THE CONTRABAND WAS IN EXCLUSIVE POSSESSION OF THE OWNER OR DRIVER. IN REID AND WHIPPLE, THE COURT REVERSED CONVICTION INVOLVING ILLEGAL POSSESSION OF COCAINE BECAUSE STATE FAILED TO LINK DEFENDANT TO CONTRABAND FOUND IN THE VEHICLE. THESE DECISIONS, BALANCE ON THE FACT THAT OTHERS HAD EQUAL ACCESS TO THE VEHICLE WHERE CONTRABAND WAS FOUND AND INVOLVE A LACK OF EVIDENCE

of the contraband in close spacial proximity or accessibility to the defendant. There were at least 3 other individuals that had access to this vehicle from the time we went to the party until the traffic stop. Ms Lewis testified to picking Mr. Little and Mr. Hopkins up, then driving to the party. She stated she gave the keys to J.T, and asked him to take Mr. Little and Mr. Hopkins home. Mr. Little testified to dropping Mr. Hopkins off and physical putting him in bed, then J.T. took him home. Ms. Lewis testifies to being the authorized driver of the van and this fact is corroborated by the owner of the van, Charles Smith. Therefore, in essence and through definition of the equal access rule, this rule definitely applies to this case because other people had the same opportunity as Mr. Hopkins to commit this crime. The state can only circumstantially place Mr. Hopkins at the scene of the crime, which proves that the evidence lacks strength. The equal access rule disputes any facts that put Mr. Hopkins in possession of cocaine because others had access and power to control the van and its contents.

III

The state also used two similar transactions to try to booster their case. In the 2010 transaction, the trial court denied the use of this transaction in the similar transaction hearing held before trial. But during

TRIAL he decided that the TRANSACTION should have been admitted and allowed the TRANSACTION to be used. The LAW states that; BEFORE EVIDENCE of a PRIOR CRIME IS admissible, the TRIAL COURT must determine that the state has affirmatively shown that; (1) the state seeks to admit EVIDENCE of the INDEPENDENT offense OR ACTS for an appropriate purpose; (2) there is sufficient EVIDENCE that the ACCUSED committed the INDEPENDENT ACT OR OFFENSE; AND (3) there is sufficient CONNECTION OR SIMILARITIES between the INDEPENDENT offenses OR ACTS AND the CRIME charged so that proof of the former tends to prove the latter. *LORO V. STATE*, GA APP 814, 406 S.E. 2d 137 (1991); *Kilgore V State* 251 GA 291, 305 S.E. 2d 82 (1983). The state has NO proof (via certified conviction) or any other document that says Mr. Hopkins possessed cocaine in the 2010 arrest. Therefore as a matter of law, this incident can not be used as a fact of evidence against Mr. Hopkins because it has never been established that Mr Hopkins possessed drugs in the 2010 incident. The drugs that were found were ~~found~~ found in the waistband of the passenger (direct physical control) and she has already plead guilty to that fact. After my conviction, Mr. Hopkins filed for a speedy trial and a Motion to Dismiss this allegation to prove his innocence and to validate his claim of innocence on this charge conviction. But the state and trial court decided to dead dock the case until all my appeals are exhausted.

BECAUSE THE STATE DECIDED UPON THIS ACTION FURTHER PROVES ~~THE~~ THAT THE ACCUSATIONS USED AS EVIDENCE IN THIS CONVICTION ARE UNPROVEN, UNJUST AND WITHOUT MERIT, (DEAD DOCKET ENCLOSED) THEREFORE, BECAUSE THERE IS NO PROOF THAT MR. HOPKINS POSSESSED COCAINE IN THE 2010 ARREST, VERIFY~~ING~~ THAT THIS TRANSACTION SHOULD ^{NOT} HAVE BEEN USED AS A CONNECTION TO DRUGS FOR MR. HOPKINS AND SHOULD NOT HAVE BEEN ALLOWED. BY ALLOWING THIS EVIDENCE TO BE USED AS A FACT OF GUILT PREJUDICE THE JURY AGAINST MR. HOPKINS AND VIOLATED HIS DUE PROCESS, HIS RIGHT TO EQUAL PROTECTION OF THE LAW AND DENIED MR. HOPKINS FUNDAMENTAL FAIRNESS AND ANY POSSIBILITY OF A FAIR TRIAL. AS FOR THE 2011 SIMILAR TRANSACTION, THERE WAS A NO LO CONTENDERE PLEA USED IN THIS CASE. THE LAW STATES IN O.C.G.A. 17-7-95(C) THAT; EXCEPT AS OTHERWISE PROVIDED BY LAW, A PLEA OF NO LO CONTENDERE PLEA SHALL NOT BE USED AGAINST THE DEFENDANT IN ANY OTHER COURT OR PROCEEDINGS AS AN ADMISSION OF GUILT OR OTHERWISE OR FOR ANY PURPOSE AND THE PLEA SHALL NOT BE DEEMED A PLEA OF GUILT FOR THE PURPOSE OF PUBLIC OFFICE, WITHOUT THE USE OF THESE SIMILAR TRANSACTIONS THE STATE HAS NO PROOF, EITHER DIRECT OR CIRCUMSTANTIALLY, THAT PROVES MR. HOPKINS GUILT BEYOND A REASONABLE DOUBT. THE STATEMENTS AND TESTIMONY THAT THE STATE USED ARE UNPROVEN, UNSUBSTANTIATED CLAIMS USED TO JUSTIFY A CONVICTION THAT SHOULDN'T HAVE HAPPENED. THIS EVIDENCE THAT USED BY THE STATE TOTALLY BIASED AND PREJUDICE THE JURY AGAINST MR. HOPKINS AND PREVENTED HIM FROM HAVING A FAIR TRIAL.

IV

Now as a final point to the case at hand, the trial court submitted unfounded, untrue information to this Honorable Court, in hopes of ~~justifying~~ justifying their conviction. In your brief of my denial, it was stated that the defendant had a large sum of cash on his person consistent with being a drug dealer. At no point during the defendant's arrest (which happened 2 weeks after the incident) was the defendant found with a large sum of cash. This evidence was never introduced in my trial, in my discovery nor was it a part of my jail inventory. The state realizes their mistake in this conviction and is deliberately and unjustly trying to justify this conviction by providing untrue, fraudulent unsubstantiated, unproven claims which directly violates Mr. Hopkins rights and ability to have a fair trial.

V

In closing, I am enclosing several documents that prove that my defense counsel, the DA and the judge knew of these arguments that I am presenting before this Honorable Court but for some reason chose to ignore these issues, for the trial court to use unsubstantiated, unproven claims as facts of evidence and then when the defendant tries to challenge these accusations, they deny him his due right by Dead Docketing the case but continues to use it as evidence to your Honorable Court. This is a complete miscarriage of justice and

GOES TOTALLY AGAINST THE LAWS OF THIS LAND, FOR THE DEFENSE COUNSEL AND APPEALS COUNSEL TO ALLOW THIS TREATMENT TO MR. HOPKINS TOTALLY VIOLATES THE GEORGIA STATE BAR RULES OF PROFESSIONAL CONDUCT AND THE 6th AMENDMENT RIGHT TO COUNSEL, WHICH STATES; THAT THIS RIGHT EXISTS AND IS NEEDED IN ORDER TO PROTECT THE FUNDAMENTAL RIGHT TO A FAIR TRIAL, SINCE ACCESS TO COUNSEL'S SKILLS AND KNOWLEDGE IS NECESSARY TO ACCORD DEFENDANT'S THE AMPLE OPPORTUNITY TO MEET THE CASE OF THE PROSECUTION TO WHICH THEY ARE ENTITLED. BECAUSE OF THESE FACTS, THEIR CONDUCT FURTHER PROVES THEIR INSUFFICIENCY AS COUNSEL.

O.C.G.A. 24-1-1 SAYS THE OBJECT OF ALL LEGAL INVESTIGATIONS IS THE DISCOVERY OF TRUTH, RULES OF EVIDENCE SHALL BE CONSTRUED TO SECURE FAIRNESS IN ADMINISTRATION, ELIMINATE UNJUSTIFIABLE EXPENSE AND DELAY AND PROMOTE THE GROWTH AND DEVELOPMENT OF THE LAW OF EVIDENCE TO THE END THAT THE TRUTH MAY BE ASCERTAINED AND PROCEEDINGS JUSTLY DETERMINED.

AS AN ESSENTIAL OF THE DUE PROCESS GUARANTEED BY THE 14th AMENDMENT, NO PERSON SHALL BE MADE TO SUFFER ONUS OF A CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF WHICH IS DEFINE AS THE EVIDENCE NECESSARY TO CONVINCE A TRIER OF FACT BEYOND A REASONABLE DOUBT OF THE EXISTENCE OF EVERY ELEMENT OF THE OFFENSE.

The motion set forth in this Honorable Court deals with facts of law and shows how this conviction lacks validity, is contrary to law, violates the principles and of Justice and Equality, and cannot be lawfully substantiated by facts. Therefore because of the above stated reasons, the defendant, respectfully asks this Honorable Court to reconsider its decision to affirm and grant him relief. The defendant is prepared to present these arguments in person to further substantiate his claims. Thank you for your time and may God Bless You!

Respectfully submitted this 2nd day of April, 2015,

LEONARD HOPKINS 420549
HANCOCK STATE PRISON
P.O. Box 339
SPARTA, GA 31087

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

Leonard Carl Hopkins

INDICTMENT NO.: 11CR6611-05

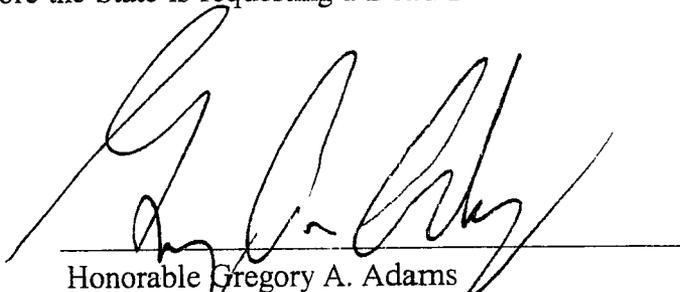
CHARGE(S): Possession of Cocaine with
Intent to Distribute, Driving While License
Suspended and Open Container

DEAD DOCKET ORDER

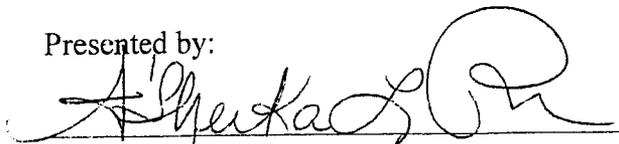
It is hereby considered, ordered, and adjudged that the above-styled case be placed on the Dead Docket for the following reasons(s):

The Defendant requested a jury trial on Indictment #12CR5192 whereupon a jury trial was began on May 28, 2013. The Defendant was found guilty and sentenced to serve 30 years and 36 months in custody. Since the sentencing date, the Defendant has filed for a Motion for a New Trial. The Motion for New Trial was heard and denied on May 20, 2014. The Defendant filed a Notice of Appeal to the Georgia Court of Appeals on May 29, 2014. There has not any indication that the case has been docketed yet. Therefore the State is requesting a Dead Docket in order to await the outcome of 12CR5192.

This 1st day of August, 2014.


Honorable Gregory A. Adams
DEKALB COUNTY SUPERIOR COURT
STONE MOUNTAIN JUDICIAL CIRCUIT

Presented by:



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Assistant District Attorney
Stone Mountain Judicial Circuit
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DEKALB COUNTY SUPERIOR COURT
DEKALB COUNTY GA

2014 AUG -4 PM 3:30

FILED


SCANNED