

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

December 7, 2015

To: Mr. Landry B. Jones, GDC501687, Phillips State Prison, 2989 West Rock Quarry Road, Buford, Georgia 30519

Docket Number: A16A0559 **Style:** Landry B. Jones v. The State

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

1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**
2. A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. **No Certificate of Service accompanied your document(s). Rule 6**
5. **Your Certificate of Service must include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.**
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
8. Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9. Letter briefs and letter cites are not permitted. Rule 27 (b)
10. Your request for court action must be submitted in motion form. Rule 41 (a) I have enclosed a copy of the Rules of the Court of Appeals of Georgia for your review.
11. Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12. Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13. The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14. Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15. Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17. The Motion to Supplement has not been granted.
18. Other: _____

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

To: *Landry B. Jones*
Docket Number *A16A0559*

Style: *Landry B. Jones v. The State*

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For Additional information, please go to the Court's website at: www.gaappeals.us

12/2/11

~~12/2/11~~

To whom it Concerns:

My name is Landry Jones
Appeal case number: A16A0559
I'm currently in prison at
Phillips State prison. I have
been in prison for the last
7 years. I am indigent
and I have a 9th grade
education. I do not have a
court appointed Attorney. I
have wrote a letter to.

2015 DEC 4 PM 4:04

Office of Indigent Defense
Cherokee Co. Justice Center
90 North Street, Suite 200
Canton, Ga. 30114

I have ask them to appoint
me a Attorney on this matter.
As of the date on this letter
I have not heard any information
back from them.

My mailing Address is:

Landry Jones #501687
H-1 Room 23T
Phillips State prison
2989 West Rock Quarry Rd.
Buford Ga. 30519

of Appeals of Georgia

Brian Jones

Appeal case Number: A16A0559

State

Criminal Charges:
purchase/passess/control
(Methamphetamine)
Theft by Receiving
Stolen property;
Removal Identifying #
w/Intent to Conceal I.D.

Appeal Brief:

LEGAL & FACTUAL ARGUMENTS

1. THE VERDICT IS CONTRARY TO THE EVIDENCE.

a. The evidence presented supporting intent to distribute methamphetamine was insufficient as a matter of law.

i. The evidence supporting the intent to distribute methamphetamine count was distant spatially and temporally from the methamphetamine. The baggies and scales were located inside the residence on May 23, 2004, the date the home was thoroughly searched inside and out—thus excluding the presence of any contraband on that date. The methamphetamine was located outside the residence inside a box inside a garbage can 19 days later on June 11, 2004. Therefore, the baggies and scales constituted legally insufficient evidence of possession with intent.

ii. The baggies and scales located inside the residence were not only spatially and temporally separated from the methamphetamine, but the uncontroverted evidence was that those baggies and scales were the

property of another person and were used for lawful purposes not for

b. The trial court erred in denying the Defendant's Motion to Suppress methamphetamine, as argued further *infra*, and therefore the evidence was properly admitted into evidence. Without the methamphetamine, there is no evidence to support the verdict as to that count.

2. THE VERDICT IS STRONGLY AGAINST THE WEIGHT OF THE EVIDENCE.

a. As argued *supra*, after the Court excludes the improper evidence (methamphetamine, marijuana, and the ATV), the remaining evidence is sufficient to convict Defendant beyond a reasonable doubt.

b. The evidence is insufficient to overcome the Defendant's mere presence defense because the methamphetamine was located by law enforcement inside a closed container, inside a closed garbage can, outside the Defendant's residence. Further, the incriminating nature of the methamphetamine was not readily apparent because it could not be seen without opening the garbage can and a box wherein same was located. Lastly, there was no evidence that the Defendant had looked inside the garbage can or opened same in said can. Therefore, the evidence is insufficient to overcome

(i.) Because the Defendant has a valid mere presence defense, it was an error of law to fail to give the mere presence charge as further argued *infra*.

c. The State's evidence was insufficient to overcome the Defendant's equal access defense because the methamphetamine was located in a garbage can outside the Defendant's residence while at least 2 other persons were present on the premises, one of which had unrestricted access to the garbage can after law enforcement officers arrived but before the search was conducted.

d. The methamphetamine and marijuana were never properly introduced into evidence by the State, and therefore the jury had insufficient evidence upon which to base its verdict.

e. The ATV was never specifically and properly identified as stolen property in the trial of the case. The VIN number was never identified on the record, and the owner only identified that the ATV had similar characteristics to his stolen ATV. The actual ATV was never shown to the witness nor the jury. This evidence is insufficient to prove the ownership of the property

3. ERRORS OF LAW PREVENTED THE DEFENDANT FROM OBTAINING A FAIR TRIAL, AND IT IS JUST AND PROPER FOR THE DEFENDANT TO BE RETRIED ON THE CHARGES LISTED ABOVE.

a. The trial court erred when it denied the Defendant's Motion to suppress evidence, based upon several grounds.

i. According to the evidence as the hearing on the Motion to Suppress and at the trial of the case, there were actually 6 Constitutionally-identifiable searches. The Defendant only contested three of those searches, and it was stipulated at the Motion to Suppress hearing that should the Court grant the Motion to Suppress at to Warrant 2867, then the remaining warrants and evidence would likewise fail on the doctrine of the fruit of the poisonous tree.

ii. The Defendant does not contest the first consent search of the home on May 23, 2004 (1st search), the search of the phone records (3rd search), and the search of Defendant's blood (6th search), however Defendant does contest the remaining searches, listed below, for the

1. The warrant search of the home conducted on June 2, 2004 made pursuant to Magistrate Court Number 2867 (where the ATV and marijuana were located and provided the basis for the arrest warrant that was executed on June 11, 2004).

→ 2. The warrantless search of the home on June 11, 2004 (where the marijuana smell was located and provided the basis for the next warrant).

→(a) The search was unlawful although incident to a lawful arrest. Defendant was not inside the home at the time of the arrest. Defendant did not consent to the officer's entering the home after the arrest. The officers conducted an illegal "free air search" while unlawfully in Defendant's home. There is no evidence that the marijuana smell was detected—or was detectable—outside the home.

3. The warrant search of the home and curtilage conducted on June 11, 2004 made pursuant to Magistrate Court Number 2880 (leading to the location of the methamphetamine in the

iii. The State failed to present crucial evidence at the Motion to Suppress Hearing. The record does not contain evidence that a key contested warrant issued on June 11, 2004 in Cherokee County Magistrate Court Number 2880 was ever introduced into evidence at the hearing on the Motion to Suppress. The official transcript containing all the exhibits tendered does not contain this key warrant. Without a certified copy of the warrant being introduced into evidence, the State has failed to meet its burden at the motion hearing. The State, therefore, lost the presumption of validity and the search was then veiled with a presumption of invalidity, and therefore, the Defendant's Motion to Suppress should have been granted.

iv. The issuing magistrate was not "neutral and detached." Defendant—and the warrant—was from the magistrate judge's home town, and the magistrate judge admitted that he did not "need people like this around Ball Ground." Because the magistrate was not neutral and detached, the warrant was invalid.

v. The information presented to the magistrate was stale because

vi. probative value. Without time references on the face of the affidavit, the magistrate was without the ability to properly ascertain whether it was more probable than not that the information sought was where the officer suspected it to be. As a result the warrant was insufficient and the evidence obtained therefore should have been suppressed.

vii. Some critical information was intentionally omitted from the warrant affidavit, making the provided information misleading and incomplete. Specifically, the Cherokee County Sheriff's Investigator knew that the Defendant's home was completely and thoroughly searched inside and out on May 23, 2004. Any and all evidence present at that time had been collected already. Failure to make this clear to the issuing magistrate constituted a critical and misleading omission, as that information would bear on the issue of whether it was probable that additional evidence was still likely to be present. As a result, the warrant was erroneously issued, and the evidence obtained from that search should have been suppressed.

ix. confidential informant. However, there was no evidence of the confidential informant's veracity and reliability on the face of the warrant, and therefore, the information allegedly obtained from the confidential informant lacked any probative value. Without that information, the warrant lacked probable cause, and therefore any evidence obtained from that search should be suppressed.

x. Some of the information presented to the magistrate by the officer was misleading and should not have been considered by the magistrate as part of the probable cause determination.

1. There was no evidence provided to any officer that 4 shots were fired at the scene, just 3. The officer either made an error repeatedly or made that evidence up.

2. There was no evidence of a second gun at the scene. A second gun, or evidence thereof, was not located in the initial search. No evidence was admitted at the hearing on the Motion to Suppress to substantiate the officer's assertion that the bullets located were of 2 different calibers. The Cherokee County

3. and no ballistics expert testified at the hearing on the Motion to Suppress. In addition thereto, there was no search attempted for a second gun at the scene even after the warrant was issued. As of the June 2, 2004 search, the investigation transformed from determining who shot the Defendant during a home invasion, to a drug/stolen property case where the shooting victim is the target of the investigation. The assertions in the warrant regarding the need to search the Defendant's home to determine who shot him are a mere pretext to obtain access to the Defendant's property to collect evidence against him. Intentionally misleading a magistrate by hiding the real purpose for a search should not be permitted under any exaggeration of the reasonable officer test. *See Wren v. U.S.*, 517 U.S. 806 (1996)

4. The officers never attempted to locate any bullet, shell casing, or firearm in his search of the home after May 23, 2004, and therefore, the allegations made in the warrant to search the home were completely pretextual and should be stricken by this

5. The officer's own affidavits are inconsistent and call each into question. On June 1, 2004, as part of the affidavit for Warrant 2867, the officer averred under oath that he had ascertained the person responsible for shooting the Defendant. However in the affidavit for Warrant 2880, the same officer averred under oath on June 11, 2004 that Warrant 2867 was needed to determine the person responsible for shooting the Defendant. Either the officer knew the identity of the shooter on June 1, 2004 or he didn't. However, you can't tell which from his inconsistent affidavits. This critical contradiction is evidence of the underlying pretext of the officer's intent.

xi. The officer failed to state the basis for his conclusory statements about the incriminating nature of otherwise lawful evidence in the affidavit, thus robbing those conclusory allegations of probative value in the probable cause determination. Information that is obtainable by the public at large, or lawful activity that can be clearly seen from public roadways, cannot constitute probable cause for a

1. Criminal history alone is insignificant to the search warrant applications because the home was just thoroughly searched on May 23, 2004.

2. The officer failed to state the basis for his conclusion that the bullet removed from the Defendant was a different caliber from the other bullets recovered. Since no other evidence was ever submitted to the court on this matter, this Court can conclude that this statement was false.

3. The officer failed to state in his affidavit his specific training and experience to support the allegations that the item seen were "commonly used" in the drug trade, or that the ATV or tools or other items observed by the officer were those "commonly" traded for drugs. The Defendant asserts that this officer would likely aver that every type item under the Sun is of the type "commonly" used in the drug trade or could be traded for drugs as is most convenient for obtaining a search warrant. These items are no more evidence in support of a search warrant than air

4. The officer failed to state in his affidavit what was incrimination about the presence of a "four wheeler type vehicle" on the property.

5. The officer failed to state in his affidavit what was incriminating about tools appearing inside a "shed."

6. Finally, since the officer was investigation a home invasion, and thus would have expertise in violent crime, he would need additional bolstering in his affidavit of his skills and specialized knowledge in the area of drug enforcement. That information was omitted from the affidavit.

xii. The warrant was improperly and ineffectively supported at the hearing on the Motion to Suppress by illegal hearsay evidence. With or without contemporaneous objection, hearsay evidence is illegal and a ruling on the Motion to Suppress cannot arise therefrom.

xiii. After removing the information that was stale, misleading, completely lacking in support, or not based upon probative evidence, the information presented to the magistrate fails to show probable cause for

7(b.) The evidence of the similar transaction (Dawson County charge) was properly admitted into evidence.

i. The allegedly similar transaction was, in fact, not similar enough to constitute properly admissible evidence and as a result only impugned the Defendant's character and did not provide evidence for any appropriate purpose.

ii. The court admitted the similar transaction evidence upon the proffer of the prosecutor alone over objection of the Defendant, and that proffer constituted no more than hearsay, and was therefore not probative. Thus, at the time the Court ruled the evidence admissible, there was no evidence before the Court to support such ruling.

c. The trial was tainted by improperly admitted evidence that was only useful for improperly impeaching the Defendant's character and not for any useful purpose.

i. The prosecution was allowed to introduce evidence of the shooting in the matter over the sustained objection of the Defendant that the matter was irrelevant.

This evidence was improperly admitted because its prejudicial value outweighed its probative value.

iii. If the marijuana evidence was properly admitted, the Court should have charged the jury that the marijuana was not part of the criminal charge and should not be considered as part of the evidence related to the possession of methamphetamine with intent to distribute.

iv. The similar transactions were not admitted for a proper purpose. None of the issues arose during the trial for the admission of similar transactions for a permissible reason for admission.

(d) The Court failed to charge the jury on the defense of "mere presence" despite the applicability of that defense to the facts and circumstances of the case. See additional argument, *supra*.

Date
12/2/15

Appellant:

Lancky Jones