

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

November 23, 2015

To: Mr. Demetrius Mosely, GDC1000675521, Jenkins Release Center, 3404 Kent Farm Drive, Millen, Georgia 30442

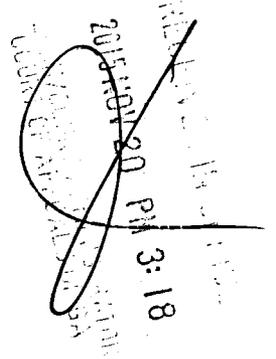
Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

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. We do not have a file to append your copy.
- 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. The Supreme Court's mailing address is: 244 Washington Street, S.W., Atlanta, Georgia 30334.**
- 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: \_\_\_\_\_
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial 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.
- 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.

To: Clerk of Court of Appeals



Re: Habeas Corpus relief

I received a letter from the advocate on my case. 11SC101024. (See attached documents) The envelope was stamped October 20, 2015. He did not date his letter. I believe I am being denied access to the court. It's been 19 months since the honorable judge denied our motion without hearing ground two and ground three. I also have copies of the Trial court, District Attorney, and assistant public defender having a conversation about what happened inside the deliberation room during deliberation on October 21, 2011. I am not sure how much time I have left before my appeal is denied, I don't want my appeal denied; And the advocate is not trying to find my transcripts; Or ask the judge for a continuance; I am not sure he knows what he is doing?

I found a U.S. Case Citing: EVITTS V.S. Lucey. U.S. At this point I don't know what else to do... My appellate keep telling me that substantial evidence is not necessary. From my understanding it's the only way a "true bill" of indictment is bound over to the Superior Court.

**THE APPELLATE DIVISION**

104 Marietta Street • Suite 600 • Atlanta, Georgia 30303  
404-232-8924 • Facsimile 404-739-5188 • [www.gapubdef.org](http://www.gapubdef.org)



Mr. Demetrius Mosley  
GDC ID: 1000675521  
Jenkins Correctional Facility  
3404 Kent Farm Dr.  
Millen, GA 30442

Dear Mr. Mosley:

I am writing in further response to your recent letters regarding the enumerations of error in your case. The issues in your case were chosen after a thorough examination of the record and transcript. We discussed these issues numerous times prior to your motion for new trial hearing. I am sure you recall our frequent and lengthy phone conversations.

I am not able at this point to go point-by-point and address everything you have raised, but many of them are already addressed in your existing argument, while others were not raised because, as we discussed, they have no basis in the record. The ineffectiveness claim against your trial counsel, for example, is focused on a specific and particular error, because something like that is what is most likely to be successful. Anything about witnesses she did or did not call, or things she did not ask on cross examination, or exhibits she did not enter will be considered by the reviewing court to be trial strategy, and almost anything that falls under trial strategy is not a winning issue. We don't want to bog down your case with extraneous issues.

Other issues you raise are simply not founded in the law. I know it is frustrating that there is no medical support for a claim of rape, but I also know that we discussed many times how and physical evidence is not necessary, and that a jury can convict based simply on the testimony of the alleged victim. We also discussed the difference between physical force, and intimidation, which also counts as force. I understand the wait is frustrating, but we will stand a better chance focusing the issues on good and clear errors.

Once your case is docketed, I will certainly look at the issues you have raised and the transcript cites you have provided and double check to see if anything needs to be added. I want to help you, but please remember that it is my job as an attorney to use my experience and expertise to present your case in the best way I can. As a lay person I know it is tempting to raise whatever issues you can think of, but in the world of appellate practice that is one of the fastest ways for the court to stop taking you seriously.

I am still working on tracking down your motion for new trial transcript. Unfortunately there was a substitute court reporter on the day of your hearing, and no one seems to have a record of who it was. This is generally not a problem in Fulton because the court reporters know that a motion for new trial hearing must be transcribed and filed in a relatively short time so that the case can move forward. Unfortunately in this case it does not seem to have been a regular Fulton County reporter who filled in. The delay, however, is certainly not due to your transcripts being edited or changed. Also, Fulton County generally takes about a year to send up their appeals cases, so while this issue is certainly exacerbating the delay now, it is not necessarily the reason we've been waiting so long in the first place. I am trying again to locate the transcript, and I am determining what can be done if the reporter cannot be located. It is important to me that we get your case moving, and hopefully we can do so soon.

Sincerely,



Kevin Anderson  
Staff Attorney

Constitutionally insufficient  
Tim 2

**CRIMINAL WARRANT**

Warrant No: EW042527

**MAGISTRATE COURT OF FULTON COUNTY:  
GEORGIA, Fulton County**

**AFFIDAVIT FOR ARREST**

(Ga. Code Ann. 17-4-45)

Personally came D. J. Agan, Jr. who on oath says that to the best of his/her knowledge and belief Demetrius L. Mosley (hereinafter called the accused) between 11/6/2010 at 03:30 and 11/6/2010 at 07:30, at Atlanta Street, Atlanta in FULTON county aforesaid, did commit the offense of RAPE 16-6-1, in that said said accused did have carnal knowledge of Lanne Fry, a female, forcibly and against her will. and this deponent makes this affidavit that a warrant may issue for his/her arrest.

Sworn to and subscribed before me,

Prosecutor/Affiant: D. J. Agan, Jr.

Deputy Clerk/Judge  
MAGISTRATE Court of Fulton County

**STATE WARRANT FOR ARREST**

STATE WARRANT FOR ARREST

(Ga. Code Ann. 17-4-46)

To any Sheriff, Deputy Sheriff, Coroner, Constable, Police Officer, Law Enforcement Officer or Marshal of said State  
**GREETING:**  
For sufficient causes made known to the Deputy Clerk of this Court (as authorized by Acts 1922, p. 207), you are therefore commanded to arrest the body of the said accused named in the foregoing affidavit, charged with the offense of RAPE 16-6-1 and bring him/her before me or some other judicial officer of this State, to be dealt with as the law directs, **HEREIN FAIL NOT.**

This 1 day of December, 2010 at 10:59:41 AM

JUDGE, MAGISTRATE COURT OF FULTON COUNT

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- 1,216.39  
3,462.61

8000.00  
- 1210.39  
6789.61

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MS. PAYTON: No, your Honor.

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MR. CARLTON: We have to have them either declare themselves hung on the counts that they can't reach a verdict on and proceed that way or -- we can't do a partial. It doesn't work that way. I'm sorry.

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THE COURT: I'm more inclined to take the verdict and grant a mistrial on the other three.

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MR. CARLTON: Well, your Honor, I believe it is a bit premature for that. They have only had the case for a few hours. I mean we -- you can send them to lunch and tell them they need to keep deliberating and continue to work. If they don't -- if the Court's not inclined to give the Allen charge --

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THE COURT: All right. I'm going to ask them to go to lunch and continue to talk and think about the case.

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MR. CARLTON: And the Court can let them know that the case was tried, you need to reach a resolution that needs to be a unanimous verdict.

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THE COURT: All right. Well, let me give the Allen charge.

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MR. CARLTON: Well, the Court can withhold the Allen charge until later on this afternoon if you'd like, but just tell them that they can continue to deliberate and come back after lunch and continue, try and talk and --

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THE COURT: All right.

MR. CARLTON: -- reach a resolution.

THE COURT: Okay. I'm gone wait. Let's bring them out, please.

(Whereupon, the jury is present in the courtroom at 11:53 a.m.)

THE COURT: Please be seated. When the jury is hung we generally give what's called an Allen charge. I'm not going to do that at this point. I'm going to send you to lunch on the county and ask that you come back and talk about everybody's views and see if the questions of the three can be answered. And so I'm going to ask you to continue to work after lunch. Okay.

And so please escort them to lunch. Thank you.  
(Whereupon, the jury continued deliberations.)

THE COURT: Let me have the jury, please.

(Whereupon, the jury is present in the courtroom at 2:38 p.m.)

THE COURT: Please be seated. Will the foreperson please stand? Please identify yourself.

THE FOREPERSON: Christopher Marston.

THE COURT: Have you reached a verdict?

THE FOREPERSON: We have, your Honor.

THE COURT: Was it unanimous?

Chief  
Judge.

1 P R O C E E D I N G S

2 Monday, October 24, 2011

3 THE COURT: While you are both here, I am  
4 going to amend the sentence to 25 years. I think  
5 25-years to serve every minute of it as the law  
6 requires. So it will be 25 on each count to run  
7 concurrent. I thought about it. I have changed my  
8 mind.

9 MR. CARLTON: Anything in particular?

10 THE COURT: Well, I think that the anal sex  
11 caused him to be convicted on the other two counts,  
12 whereas if that wasn't in the case I think he might have  
13 been acquitted.

14 Is that basically what the jurors told you, Miss  
15 Grantham?

16 MS. GRANTHAM: Hum --

17 THE COURT: That was a big factor.

18 MS. GRANTHAM: What they said was that I think  
19 they deliberated on count three, which was the  
20 aggravated sodomy charge based on the anal intercourse  
21 and then said the other two --

22 MR. CARLTON: They worked backwards through  
23 the indictment.

24 I don't recall them saying that that would have  
25 been the decision if they would have not had the anal

1 intercourse or not. They never said that part of it to  
2 me.

3 MS. GRANTHAM: And we were back there the whole  
4 time. What they did, they had on the dry erase board  
5 back there, they had each count listed at the top, count  
6 1, 2, 3, 4. They had come to their decision on count  
7 four and they did work backwards from the indictment but  
8 that once they decided that, which would be count three --

9 THE COURT: Were they hung on the aggravated  
10 sodomy, anal intercourse?

11 MS. GRANTHAM: They were hung 9 to 3, I think  
12 on counts 1 through 3, was my understanding.

13 MR. CARLTON: Yeah, 9 to 3 on 1, 2 and 3. And  
14 then they had decided not guilty on the false  
15 imprisonment. But they did not really -- they just said  
16 they'd worked backward. I don't think that --

17 THE COURT: All right. Well, I think based on  
18 the totality of the circumstances that the 25-years is  
19 sufficient. And you waived his presence, right, Miss  
20 Grantham?

21 MS. GRANTHAM: Yes, Your Honor. I don't think  
22 he would object.

23 THE COURT: And the State objects, I understand.  
24 All right. You all have a good day.

25 MS. GRANTHAM: Thank you very much, Your Honor.

1 CASE MANAGER: What do you want taken off, Judge,  
2 the O.C.G.A. code?

3 THE WITNESS: The code sections, the case and the  
4 State's request.

5 MR. CARLTON: False imprisonment is 27.

6 THE COURT: I'll send them back. And we got to  
7 take the code section off of that and the State's  
8 request, please.

9 Let me bring out the jury, please, and let's just  
10 tell them that I'm going to give them those charges.

11 MR. CARLTON: As far as the first two, you're just  
12 going to tell them you've heard all the evidence?

13 THE COURT: Yeah.

14 MS. GRANTHAM: Rely on their collective.

15 THE COURT: Right.

16 (Whereupon, the jury is present in the courtroom at  
17 3:01 p.m.)

18 THE COURT: Please be seated. I have your  
19 questions which I have marked respectively Court's  
20 Exhibit 1 and Court's Exhibit 2. Let's start with  
21 Court's Exhibit 2.

22 Question 1: May we have the audio transcript of  
23 Ms. Fry's interview with Detective Dijon.

24 And the answer is no. You have to rely on your  
25 collective memories of the evidence.