

**COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR APPLICATIONS**

November 13, 2015

To: Mr. William Shane Nichols, GDC1000645223, Hays State Prison, Post Office Box 668, Trion, Georgia 30753

Docket Number: Style: **William Shane Nichols v. The State**

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

1. Your Application was not accompanied by the statutory filing fee, \$300.00 civil; \$80.00 criminal, 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. Portions of the record included were not tabbed and indexed. Rules 30 (e) and 31 (c).
3. **A stamped "filed" copy of the trial court's order to be appealed was not attached to your Application. Rules 30 (b) and 31 (e)**
4. A stamped "filed" copy of the Certificate of Immediate Review was not attached to your Interlocutory Application. Rule 30(b)
5. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
6. There were an insufficient number of copies of your document. Rule 6
7. No Certificate of Service accompanied your document(s). Rule 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.
8. Your Certificate of Service did not include the complete name and /or mailing address of each opposing counsel and pro se party. Rule 1(a) and 6
9. Your document exceeds page limits. Rules 24(f) , 30(e) and 31(c)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. No extension of time for filing an interlocutory application will be granted . Rule 30 (g) . No extension of time will be granted for filing a discretionary application unless the motion for extension is filed on or before the due date of the discretionary application.
12. The type font was smaller than 10 characters per inch; type was not double-spaced or/and type was on both sides of the paper. Rules 1(c), 24(b), 37(a) and 41(b).
13. Your motions were submitted in an improper form (joint, compound, or alternative motions in one document). Rule 41 (b)
14. Margins were too small or paper size was incorrect. Rules 1(c), 24(c), 30(e), 31(c) and 41(b).
15. Your document was submitted for filing more than 30 days after the date of the order granting, denying or dismissing the application or the order granting, denying or dismissing the Motion for Reconsideration. Rules 30(j) and 31(j).
16. **Other:**

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

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15. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rules 1(c), 30 (e) and 31 (c)
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The Court of Appeals of Georgia

Application for Appeal

William Shane Nichols

v.

Docket #

The State of Georgia

* Pro - Se *

I the Defendant William Shane Nichols now Comes before the Court of Appeals of Georgia to file an Appeal due to the Extraordinary Motion for new trial has been denied by the Superior Court of Cobb County.

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COURT OF APPEALS
GEORGIA

The Defendant was indicted on 12-03-2009 of the following Charges.

- ① Aggravated Sexual Battery
- ② Aggravated Sodomy
- ③ False Imprisonment
- ④ Criminal Trespass
- ⑤ Battery
- ⑥ Public Indecency

The Defendant was found not guilty of Battery by the jury due to no evidence

The Defendant was given a direct verdict of not guilty by the Judge due to no evidence on Criminal Trespass.

The Defendant has filed an Extraordinary Motion for new trial requesting DNA, Challenging venue, violation of the Brady rule, violation in limine against prejudicial testimony. The request of DNA with the evidence the State claims to have will show the innocence of the Defendant.

The State has only claimed to have evidence to convict the Defendant.

The conviction of the Defendant by the State only comes from hearsay. The Defendant has evidence to prove his innocence of all convictions from the State of Georgia. Case Number 09-9-5129-51, The Superior Court of Cobb County has refused the request from the Defendant only because the Court has allowed the errors to happen, the Court knows an innocent man has been wrongfully convicted. If the Defendant is given his rights to a fair trial the verdict will in fact have a different outcome.

The Defendant list the following grounds as it's listed on the Extraordinary Motion for new trial.

Grounds that are being raised for Appeals.

- ① The State Violates the Motion of Limine against prejudicial testimony.
- ② The State Violates the Brady Rule.
- ③ Ineffective Assistance of Counsel.
- ④ The Challenge of Venue.

The four grounds have been violated, objected to by the Defendant, denied by the Superior Court of Cobb County, and is now being appealed. Each ground is very critical to the Defendants trial. Each ground has meaning and reason to grant the Defendant a new trial. A Statement of Facts and Case law have been used, now at this time the Defendant gives a detailed fact of each ground.

Ground One, The State violates the motion of Limine against prejudicial testimony. The Defendant was granted this Motion to keep the State from painting a picture to the jury of drug use. The Defendant has not been charged with any type of drug charges. The State only wishes to poison the jury. The State has Dr. Ray the E.R. doctor to testify that Ms. Collins stated to him that her boyfriend the Defendant may be on drugs. This statement is said in the presence of the jury. The trial Judge Robert Leonard has the jury removed from the courtroom so that he can explain to Dr. Ray not to say that "again." The jury has heard the statement, the poison has been set. The Defendant's right to a fair trial has now been violated. As in McKenzie v. State and Hanson v. State, where the Defense requested a mistrial due to improper testimony. The trial court correctly instructed the jury to disregard the testimony from the witness. Therefore, a mistrial would not be granted due to proper conduct by the trial court.

However, this did not take place in the Defendant's Case. The Defendant was never notified in the discovery that Dr. Ray would testify that he was told by the so-called victim that he the Defendant was on drugs. The State violates O.C.G.A. 17-16-4. In Ludy v. State, Ludy's contention that this evidence impermissibly placed his character in issue, is adversely controlled by Archie v. State. The evidence being that Ludy stated to the investigating officer of his drug habit was not given to the Defense (10) Ten days before trial. The Judgment was reversed.

McKenzie v. State, 187 Ga. App. 840, 371 SE 2d 869 (1988)

Hanson v. State, 229 Ga. App. 205, 493 SE 2d 605 (1997)

Archie v. State, 137 Ga. App. 386 (1) 224 SE 2d 64 ()

Ludy v. State, 177 Ga. App. 767, 341 SE 2d 224 (1986)

Ground Two the State violates the Brady Rule, O.C.G.A. 17-16-41. The State has had plenty enough time to have it's discovery pack "evidence" ready. The Case is two years old at the time of trial. The State Comes up with the only said to be evidence just four and five days before trial. The State turns over pictures taken by the led Detective, Det. Shumpert of the Hennesaw Police Department. The pictures that was held from the Defendant that Det. Shumpert took of Naomi at the E.R. Shows no evidence and proves why he kept the pictures from the Defendant and the State. There were pictures held by Naomi Collins the said to be victim in this case. These pictures are of a backseat, doors, the inside of a vehicle, that she "claims" to be the crime scene. There is no evidence of any crime from the pictures. The pictures were taken two years before and held from all evidence. The pictures show no ownership to the Defendant! there is nothing that shows what type of vehicle that's being showed. There is also pictures of a cell phone. The date shows 8-28-09.

This is four weeks later. There is no evidence that the phone in the pictures belong to Ms. Collins. The Defendant has not been charged for breaking any phone involved in this case. Once again this is only used to poison the jury. Without the pictures the State has nothing to show the jury. If the vehicle does belong to the Defendant and Ms. Collins and some type of sexual attack took place for over an hour, then DNA will prove this to be true. But, what happen was the police never seen the vehicle, they don't know what took place, there was no investigation and now at trial two years later these pictures show up. This is a violation to the Defendant. The State cannot use evidence that they held from the Defense when knowing of the evidence. Det. Shumpert stated on 11-5-09 that he took photos of Ms. Collins on the morning of 8-1-09. The Defendant's right to a fair trial has now been violated. Also the Defendant has requested for DNA through an -

Extraordinary Motion for new trial. The request has been denied by the trial Judge, for an unknown reason.

As in Pate v. State, Pate also filed an Extraordinary Motion for new trial, requesting DNA from evidence used at trial. The trial Court denied the motion without a reason. Pate appealed the trial Court's decision to the Court of Appeals of Georgia. The Court of Appeals decision was, order vacated and case remanded with direction. This is filed under O.C.G.A. 5-5-41(c).

Just because the violation of O.C.G.A. 17-16-4 is not raised, does not mean to condone the State's failure to comply with the discovery statute O.C.G.A. 17-16-4.

In Ludy v. State the judgment was reversed due to this same violation.

Ludy v. State, 177 Ga. App. 767, 341 SE 2d 224 (1986)

Pate v. State, 292 Ga. App. 815, 665 SE 2d 907 (2008)

Ground Three, the Defense Attorney Ms. Cindi L. Yeager, former prosecutor in Cobb County State Bar # 701550 has led the Defendant to trial. The Defendant was offered two plea deals on this case. One was for two years in prison, the other was for ten years on probation, both pleas was for the conviction of False Imprisonment only. Ms. Yeager told the Defendant that without evidence he could not be convicted. There is no evidence of the said to be charges against the Defendant but he was infact convicted. Ms. Yeager does not object to either violation made from the trial. The violations being grounds one and two of the Extraordinary Motion for new trial. Those violations are now listed in this same motion. Had Ms. Yeager objected to these violations at trial the Defendant's rights to a fair trial would not have been violated. Due to the Ineffective Assistance of Counsel the Defendant has been found guilty. The Defendant should be granted a new trial.

Failure to object to improper testimony
Earls v. McCaughtry, 379 F.3d 489 (2004)

Failure to object to introduction of evidence
that resulted in Defendants conviction.
Chatom v. White, 858 F.2d 1479 (1988)

Ground Four, The Defendant Challenges Venue of the Crime. The State has not seen the crime site, therefore the State cannot give a location to the crimes against the Defendant. Venue is required in all crimes. A street name by itself is not strong enough to show venue. The State does show pictures taken by Ms. Collins, however, this does not show or state any location to a crime. O.C.G.A. 17-2-2 states venue is an element that's proven in all cases where the defendant pleads not guilty. The State cannot show venue to the following charges. Aggravated Sexual Battery, Aggravated Sodomy, and False Imprisonment. Therefore, the case must be reversed due to this violation. No Venue.

Jones v. State, 272 Ga. 900 272 Ga. 900; 537 SE 2d 80 537 SE 2d 80 (2000)

Starling v. State 242 Ga. App. 685, 242 Ga. App. 685; 530 SE 2d 757, 530 SE 2d 757 (2000)

Bradley v. State, 238 Ga. App. 490, 519 SE 2d 261 (1999)

This case is based on a couple that lived together, who were planned to get married and they have a child together. They (the couple) Shane and Naomi, made plans to go out on a date with a female coworker of Naomi's. Their plans were to have sex. The Defendant Mr. Nichols is being accused of placing his fingers and mouth on his girlfriend's vagina, this being Naomi. There has never been any evidence that any sex acts took place with or without consent on the morning of August 1, 2009. All the Defendant has asked for is a trial to where he can take the stand to defend himself. All the State has is the Defendant's ex-girlfriend Naomi Collins, whom claims these acts against her. At no time can she give or show any evidence of the crimes against her ex-boyfriend the Defendant Shane Nichols. Mr. Nichols has already been found not guilty of Battery by the jury at trial. This was due to there is no evidence. If the Defendant is given a fair trial, he can show with evidence that all charges against him will result in a not guilty verdict.

At this time Mr. Nichols ask the Court of Appeals to accept this Application for an Appeal. The Appeal will show full Case law and merit to grant a new trial. Mr. Nichols at this time thanks the Court of Appeals for granting this Application.

Sincerely,

Shane Nichols,
~~Shane Nichols~~

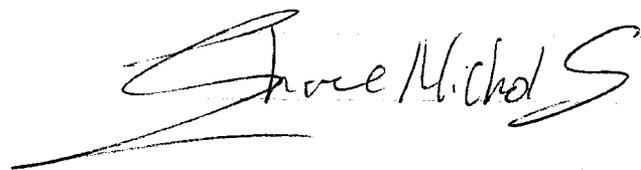
Nov. 2, 2015

The following Application for Appeal has been mailed to the following through the United States Postal Service with the proper amount of postage and the correct address.

① Georgia Court of Appeals
417 Trinity Ave. # 501
Atlanta, GA.
30334

② D.A.'s Office - Chuck Boring
70 Haynes St.
Marietta, GA.
30060

Shane Nichols
1000645223
P.O. Box 668
Trion, GA.
30753



NOV. 2, 2015

FORM 2 - PAUPER'S AFFIDAVIT

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CLERK/COURT ADMINISTRATOR
COURT OF APPEALS OF GA

COURT OF APPEALS OF GEORGIA

William Nichols, *

APPELLANT *

vs *

The State of Georgia *

APPELLEE

CASE NUMBER

PAUPER'S AFFIDAVIT

Comes now William Nichols (Appellant's name) first being duly sworn, deposes and states I am financially unable to pay the filing fee required for filing costs in the Court of Appeals of Georgia, and I request I be permitted to file Application (Appellant's Brief or Appellant's Application) without having to pay filing fees. I further swear that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed? Yes No

If the answer is "Yes", state the amount of your salary or wages per month, and give the name and address of your employer: _____

If the answer is "No", state the date of last employment and the amount of the salary and wages per month which you received: Oct. 2010 \$2.13 per hour

2. Have you received within the past twelve months any money from any of the following sources?

- | | | |
|--|------------------------------|--|
| Business, profession or form of self-employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Pensions, annuities or life insurance payments? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Rent payments, interest or dividends? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Gifts or inheritances? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Any other sources? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If the answer to any of the above is "Yes", describe each source of money and state the amount received from each source during the past twelve months: _____

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts) Yes No

If the answer is "Yes", state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes No

If the answer is "Yes", describe the property and state its approximate value:

5. List the persons who are dependent upon you for financial support, state your relationship to those persons, and indicate how you contribute toward their support: _____

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury and that state law provides as follows:

(a) A person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue on point in question.

(b) A person convicted of the offense of perjury shall be punished by a fine of not more than \$1,000 or by imprisonment for not less than one nor more than ten years, or both. OCGA §16-10-70.

I, William Shane Nichols, do swear and affirm under penalty of law that the statements contained in this affidavit are true. I further attest that this application for in forma pauperis status is not presented to harass or to cause unnecessary delay or needless increase in the costs of litigation.

This the 26 day of Oct., 2015.

William Shane Nichols
(Your name printed or typed)

[Signature]
(Sign your name.)

P.O. box 1668
Trion GA- 30753
(Your complete address and telephone number)

Sworn to and subscribed before me

SEAL

this the 26th day of Oct., 2015.

Carole P. Farr Notary Public

