

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

October 2, 2015

To: Mr. Aaron Obeginski, GDC1000357597, H2-7B, Telfair State Prison, Post Office Box 549,  
Helena, Georgia 31037

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

Court of Appeals Case Number and Style: A15A0089. Aaron Obeginski 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.
- No Certificate of Service accompanied your document(s). 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. 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.
- The Court of Appeals of Georgia does not have the power or authority to appoint counsel for you. Any requests for appointed counsel should be directed to the trial court.

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

To: *Aaron Obeginski*  
Docket Number: *A16A0089*

Style: *Aaron Obeginski 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 or an improper Certificate of Service accompanied your document(s). Rule 6
5.  Your Certificate of Service did not include the complete name and mailing address of each opposing counsel and pro se 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)
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: *The Court of Appeal does not appoint counsel.*

September 28<sup>TH</sup>, 2015

FILED IN OFFICE  
SEP 29 2015  
COURT CLERK  
CLERK COURT OF APPEALS OF GA

Dear Clerk;

I didn't receive docketing notice until SEPTEMBER 15, 2015. Since I'm incarcerated my documents are considered filed upon depositing in the prison's mail box. (Called the mail box rule. I'm also prevented from buying only so many stamps and used all of them last week sending out legal mail for the federal deadline. I had to wait until store today to buy more stamps, However the mail had already gone out or been picked-up this morning at 7:00 AM.

Please file my MOTION FOR APPOINTMENT OF COUNSEL, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, And my APPELLANTS BRIEF with a CERTIFICATE OF SERVICE.

Respectfully,  
Aaron Obeginski

AARON OBEGINSKI

TELFAR STATE PRISON

P.O. Box 549, HELENA GA. 31037

I certify under penalty of perjury this mail was deposited in mail box on 9-28-15

Aaron Obeginski

RECEIVED IN OFFICE  
2015 OCT 12 AM 11:17  
COURT CLERK  
CLERK COURT OF APPEALS OF GA

COURT OF APPEALS

STATE OF GEORGIA

AARON LEIGH OBEGINSKI

APPELLANT

v.

THE STATE

RESPONDANT

APPEAL CASE

No

A16A0089

FROM: 2009CROSS4

Pro-Se

FILED IN OFFICE  
SEP 29 2015  
COURT CLERK  
COURT OF APPEALS OF GA  
15005-2  
11:18

FILED IN OFFICE

SEP 29 2015

COURT CLERK  
COURT OF APPEALS OF GA

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Now comes AARON OBEGINSKI, Appellant in the case above, Requesting this court to waive the \$80<sup>00</sup> filing fee because he is incarcerated and pre-se, and unable to pay the fee. Under penalty of perjury I certify that this motion is filed on the date below. Mail box Rule.

Dated this 28<sup>th</sup> day of September, 2015.

Signed: *Aaron Obeginski*

#1000357597

AARON OBEGINSKI

TELFAIR STATE PRISON

P.O. Box 549, Helena Ga. 31037

IN THE COURT OF APPEALS  
FOR THE STATE OF GEORGIA

ARROW LEIGH OBEGINSKI

APPELLANT

V.

THE STATE

RESPONDANT

APPEAL CASE

No.

A16A0089

FROM: 2009CR0554

PRO-SE

MOTION FOR THE APPOINTMENT OF COUNSEL

Now comes ARROW OBEGINSKI, Appellant in the case

above, Request this court to appoint counsel as

the law requires, and the appellant is entitled to

ON DIRECT APPEAL. Appellant also requests counsel

be appointed from the private sector as the public

defenders standards council and its representatives

will soon be notified of a pending lawsuit

against it's past representation

Dated this 28<sup>TH</sup> day of SEPTEMBER, 2015.

Signed: Arrow Obeginski - #1000357597

ARROW OBEGINSKI

TELEAIR STATE DOCUMENT PARALLEL HOLDING GA 31037

IN THE COURT OF APPEALS  
FOR THE STATE OF GEORGIA

AARON LEIGHT OBEGINSKI

APPELLANT

V.

THE STATE

RESPONDANT

APPEAL CASE

No.

A16A0089

FROM: 2009 CR 0554

PRO - Se

APPELLANT'S BRIEF

Now comes AARON OBEGINSKI, Appellant in the above case  
appealing the Superior Court of Newton County/  
Judge OTT's decision regarding the arrest  
for perjury of Lead Investigator CHRISTOPHER  
MARK HEGWOOD of the Newton County Sheriff's Office.  
It was decided by the Superior Court that the  
testimony in conflict with the truth, was not  
"material" from Investigator HEGWOOD at appellant's  
criminal trial #2009CR0554 on an early NOVEMBER  
14<sup>TH</sup>, 2014 arrest warrant hearing. I disagree.

FILED IN OFFICE

SEP 29 2015

COURT CLERK

CLERK COURT OF APPEALS OF GA

RECEIVED  
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SEP 29 2015  
11:18 AM

## PART II : ENUMERATION OF ERRORS

ERROR # 1.) On page 69 (Trial Transcript) Line 23 and 24 When asked

"When you left the residence, did you write and obtain a search warrant to search defendant's bedroom?"

Investigator HEGWOOD answers "Yes, I did."

Investigator Hegwood's own internal report says he arrived at 3:46 PM, and yet Magistrate judge Degonia testified NOVEMBER 14<sup>TH</sup>, 2014 at an arrest warrant hearing that he signed an affidavit at 2:18 PM, Page 28-Line 4 of the (hearing Transcript, HT), which is inconsistent with Lead investigator C. Mark Hegwood's testimony.

ERROR # 2.) Further, more judge Degonia is retired and the law requires "WRITTEN PERMISSION" from an active judge to issue a search warrant.

## PART II: ENUMERATION OF ERRORS (cont)

Error #2 (cont) See O.C.G.A. § 17-5-21(c).

Error #3: "The burden of proving the search and seizure were lawful shall be on the state." O.C.G.A. § 17-5-30(b)

I filed a MOTION TO SUPPRESS prior to trial and was denied by the court (Trial Court). At a hearing BERT HOPKINS attended as my attorney.

Finally on NOVEMBER 14<sup>TH</sup>, 2014 Inv. Hegwood confirms he never had a signed warrant. See (PAGE 20, Line 16, H.T.) "I do not have a signed warrant."

Error #4: Investigator Hegwood files unsigned warrant claiming it was served at 7:50 P.M. on the 14<sup>TH</sup> of FEBRUARY, 2009. Inv. Hegwood took pictures of the scene outside which are clearly in broad day light. I discovered

## PART II: ENUMERATION OF ERRORS (cont)

Error #4 (cont)

that the sun sets around 6 P.M. in FEBRUARY and that the Investigator again lied. It's unlikely jurors would believe Inv. Hegwood didn't notice the warrant he made multiple copies of, served in multiple places, filed with the court, was in fact unsigned on the front page - where the judge signs.

Error #5: Investigator Hegwood's own internal report documents that he found an empty vodka bottle in my bedroom, and yet testifies at trial instead that he found a "bottle of vodka" (PAGE 74, LINE 22 T.T) indicating the presence of alcohol. And again internally he found 3 empty bottles in my vehicle, and again testifying at

## Part II: ENUMERATION OF ERRORS (cont)

Error #5 (cont)

trial when ask "did you find any alcohol in the defendant's trunk?" he testified "I found three vodka bottles in the trunk" (Page 76, Lines 3-5 T.T.) Showing the willingness to lie and mislead the jury. The testimony would be used to bolster the victims testimony. Investigator Hegwood gathered and testified about nearly all evidence presented to jury, without a warrant.

Error #6: Investigator HEGWOOD was the only witness called by the state to testify at my grand jury hearing to indite me. Investigator Hegwood testified that I was found nude with my daughter who was nude in the affidavit signed by DEGONIA as probable

## PART II: ENUMERATION OF ERRORS (CON'T)

Error #6 (cont)

cause to both indite me, and arrest me. However the truth is contrary. The record indicates I was wearing shorts and my daughter was clothed.

ERROR #7 : Investigator Hegwood attended and directed the interrogation of my daughter at the childrens hospital. This is the exact same circumstances that overturned the conviction in:

FERRER V. STATE, 267 GA. APP. 811, 600 S.E.2d. 793 (2004),

Reliability hearing required - Defendant's child molestation was reversed given that the child victim was 8 yr old, that victim gave inconsistent statements that the victim might have been coached by the defendant's estranged spouse, that law enforcement was involved in the child's interviews, that 75-out-of-court hearsay statements of the child were introduced by the state, and that the child hearsay statements formed the bulk of the evidence against the defendant, a pre trial GREGG hearing on the reliability of the statements was required under former O.C.G.A. §24-3-16.

## PART II: ENUMERATION OF ERRORS (cont)

Error #7 (cont)

See Now O.C.G.A. § 24-8-820. The hearsay statements were illegally entered into evidence.

ERROR #8

"The court determine "that there was no material statement made by officer Hegwood" that was false (PAGE 33,34, Lines 25-1+2 H.T.) and material to the case". Clearly Inv. Hegwood's testimony, in regard to bolstering the alleged victim's testimony, and my own testimony would have swayed the jury my way had the jury known that Inv. Hegwood lied concerning the warrant and other testimony as I have shown. It was material to my testimony, In that when asked if Inv. Hegwood "Is being truthful.." and I answer "No, I don't believe so."

ERROR

the issue of materiality is a question for the jury to decide whether the [Investigator] actually

## PART II: ENUMERATION OF ERRORS (cont)

Error #8 (cont)

had such an intent [to deceive]" MURPHY V. DRUKE,  
668 So. 2d. 513, 517 (Ala. 1995) (ON Materiality)

Error #9: "The trial court's finding of materiality was erroneous  
as a matter of law where the prosecution knew  
or should have known of the perjury the conviction  
must be set aside "If there is any reasonable likelihood  
that the false testimony could have affected the  
judgement of the jury" U.S. V. AGURS, 427 U.S. 97, 103 (1976)

"There was no consistent historical tradition  
supporting the proposition that a historical  
exception existed, by which the element of  
materiality in perjury prosecutions was to  
be decided by the judge. AZIM V. U.S., 314 Fed.

APPX. 193 (2008) U.S. COURT OF APPEALS (5<sup>TH</sup> + 11<sup>TH</sup> CIR.

## PART II: ENUMERATIONS OF ERROR (CONT.)

Error #10:

Trial counsel ineffective for failing to investigate defendant's filing of a MOTION TO SUPPRESS. And for failing to acquire the search, or withholding it from defendant.

Error #11: BRADY Claim for prosecution's failure to disclose impeachable discovery.

Error #12: NAPUE VIOLATION "It is of no consequence that the falsehood bore upon the witness' credibility rather than the defendant's guilt. A lie is a lie, no matter who's it's subject, and if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth... that the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair." NAPUE V. ILLINOIS, 360 U.S. 264, 270, 1959

"The Napue test - specifically the issue of Materiality is just such a mixed question of law and fact, and so we undertake an independent appellate analysis to determine whether the facts found by the trial court rise to the level of the applicable legal standard." U.S.V. O'Keefe 128 F.

### PART III: Conclusion on Materiality

"Evidence is material when there is a reasonable probability that the withheld evidence would have altered at least one juror's assessment,"  
[of the case] NAPUE V. ILL., 360 U.S. 264, 269; See also  
MOONEY V. HOLOTTEN, 294 U.S. 103, 112 (1935) (Per curiam)

"Evidence 'favorable to the accused' includes evidence that impeaches a government witness."

And "Regardless of request, favorable evidence is material..." U.S. V. BAGLEY, 473 U.S. 667, 676, 682 (1985)

GAUDIN ERROR: Which held that materiality is for a question of the jury to decide, not the court.

U.S. V. GAUDIN, 515 U.S. 506, 132 L.Ed.2d. 444, 115 S.Ct. 2310 (1995)

And on certiorari to the U.S. Supreme court affirmed

"held that the trial judge's refusal to allow

### PART III: CONCLUSION ON MATERIALITY (cont)

the jury to determine the materiality of the alleged false statements infringed the accused's right-guaranteed by the fifth amendment's due process clause and the sixth amendment's right to a jury." "It is immaterial whether the falsehood concerns an essential element of the government's case or only a collateral matter affecting credibility. U.S. V. BARHAM, 595 F.2d. 231, 241 <sup>(5th Cir. 1979)</sup>

"Defendant doesn't need to renew his objection at trial to reserve on appeal." CREW SHAW V. STATE, 248 GA. APP. 506, <sup>(2001)</sup>

See also Werner V. State, 246 Ga. App 677 (2001?). "Aside from exculpatory evidence, the government is also obligated to disclose information that could be used to impeach government witness especially where

### PART III: CONCLUSION ON MATERIALITY (cont)

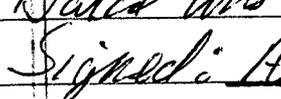
the witnesses testimony is an important part of the government's case.

GIGLIO V. U.S., 405 U.S. 150 (1972).

### PART IV: CONCLUSION

Whether the state with held exculpatory evidence or Appellant's own trial and appellate counsel appointed against his will is a fact that remains undetermine. I request a hearing to cross-examine both appointed Public defenders to determine - This would require appointment of a Private attorney with no conflict of interest. See ODUM V. State, 288 GA. App 291, 641 S.E. 2d 279.

Dated this 28<sup>th</sup> day of SEPTEMBER, 2015.

Signed:  Aaron Obeginski #100035759

TELF AIR STATE PRISON, P.O. Box 549, Helena GA, 31037