

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

February 6, 2015

To: Ms. Clareth Ross, GDC176413, Lee Arrendale State Prison, Post Office Box 709, Alto, Georgia 30510

Docket Number: A15A0785 **Style:** Clareth Ross 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 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.
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10. Your request for court action must be submitted in motion form. Rule 41 (a)
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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: An Appellant's Brief was filed on January 27, 2015. We are returning Part III. Argument and Citation of Authority to you.**

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

PART III. ARGUMENT AND CITATION OF AUTHORITY

A. STANDARD OF REVIEW

Issues involving "a question of law," no deference is owed to the trial court's ruling, applying "the 'plain legal error' standard of review." State v. Bachau, 321 Ga. App. 721 (2013); R & R Insulation Servs. v. Royal Tudem. Co., 307 Ga. App. 419 (2010).

B. ARGUMENT AND CITATION OF AUTHORITY

This case will not require breaking new ground — all that is at issue is whether "more was required of the trial court than a 'one-sentence denial' of the motion based on the indictment alone."

ROSS' DUE PROCESS RIGHTS WERE VIOLATED WHEN THE TRIAL COURT ENTERED A ONE-SENTENCE DENIAL OF THE MOTION BASED ON THE INDICTMENT ALONE. (ERROR NO. 1)

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Defective Indictment (dates, jurisdiction and venue, etc.)

The language of the indictment reads in pertinent parts as follows:

TT. Page 29, L. 4-25: "The grand jurors, selected and sworn for the County of Rockdale, to wit, . . . , Claretta Hazely Ross, . . . with having committed the offense of theft by deception, . . . in Rockdale County, Georgia between the dates of the 22nd of April 2006, and 27th day of April 2006, did unlawfully then and there with the intent to deprive United Community Bank of certain property, United States currency, with a value greater than five hundred dollars, . . . did open the account number 2041105970 at United Community Bank in the name of Ross and Ross Trucking Company, Inc. . . ."

A person commits theft by deception when that person obtains property by any deceitful means or artful practice with the intent to deprive the owner of the property. . . . O.C.G.A. §16-8-3.

To secure Ross' conviction the State was required to show that in Rockdale County, Georgia on the 22nd day of April, 2006, [Ross'] did unlawfully obtain with the intent to deprive United Community Bank of certain property, United States currency, in the amount of [\$100] with a value greater than five hundred dollars [\$500], See Gentley v. State, 202 Ga. App. 465 (1992); see also, State's Exhibit "#1".

To secure Ross' conviction the State was required to show that in Rockdale County, Georgia on the 24th day of April, 2006; [Ross'] did unlawfully obtain with the intent to deprive United Community Bank of certain property, United States currency, in the amount of [\$120] with a value greater than five hundred dollars [\$500], See Gentley at 465; see also, State's Exhibit "#2".

To secure Ross' conviction the State was required to show that in Rockdale County, Georgia on the 26th day of April, 2006, [Ross] did unlawfully obtain with the intent to deprive United Community Bank of certain property, United States currency, in the amount of [5,000] with a value greater than five hundred dollars [500], See Geubey at 465; see also, State's Exhibit "#12".

To secure Ross' conviction the State was required to show that in Rockdale County, Georgia on the 27th day of April, 2006, [Ross] did unlawfully obtain with the intent to deprive United Community Bank of certain property, United States currency, in the amount of [0] with a value greater than five hundred dollars [500], See Geubey at 465.

In 1992, the Court held that a variance exist between the indictment and proof adduced at trial, the conviction was reversed. Id.; see also, Smith v. Harderck, 266 Ga. 54 (1995) (sentenced on fatally defective and void indictment).

In other similar cases, United States v. Musgrave, 444 F. 2d

755, 760-61 (5th Cir. 1971) (fatally defective indictment must be reversed); see also, U.S. v. Scott, 993 F. 2d 1520, 1521-22 (11th Cir. 1993) (facts do state a material element of the offense).

In a 1962 ~~U.S.~~ Supreme Court decision, that court held that "the defendant had a right to have an adequately informed grand jury return the indictment" See Russell v. U.S., 369 U.S. 749, 770 (1962).

According to Webster's New World College Dictionary (4th Ed.) at 1484 defines "'then and there' — 'at that time and in that place; 'at once'!"

CERTIFICATE OF SERVICE

This is to certify that I have, on this day, submitted complete and correct copies of the foregoing Brief Of Appellants Pages 8-12 upon the parties listed below, by placing same in the United States mail, with sufficient postage affixed thereto.

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Court Of Appeals of Georgia
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This *3rd day of February, 2015.

Chartha Ross
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