

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

January 29, 2015

To: Mr. Edmund H. Skoruski, Solicitor General, 1520 Third Street • Suite D, Folkston, Georgia 31537

Docket Number: A15A0763

Style: Robert Horne 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.**
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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: Only one copy of the Brief of Appellee was received. This Court requires one original and two copies.**

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IN THE COURT OF APPEALS
OF THE STATE OF GEORGIA

RECEIVED IN OFFICE
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COURT OF APPEALS OF GA

STATE OF GEORGIA, *

Appellee, *

Vs. *

CASE NO: A15A0763

ROBERT MICHAEL HORNE, *

Appellant. *

BRIEF OF APPELEE

Now comes the State of Georgia, Appellee, in the above-styled case, and files this brief respectfully showing this Honorable Court the following:

PART 1

Statement of Proceedings

The State adopts Appellants statement of proceedings.

Statement of Facts

On December 14, 2013, while patrolling in Charlton County, Georgia State Patrol Officer Josh Taylor noticed a vehicle operated by the appellant traveling at a slow rate of speed on Highway 23. The trooper testified that he clocked the appellant's vehicle going 41 mph in a 55 mph zone. (T.7-8). When the trooper got behind the Appellant's truck, he noticed the truck run across the fog and center lines. He then activated his lights and stopped the Appellant. (T.8). As he approached the vehicle and began talking with the appellant, the trooper stated that Mr. Horne appeared to be dazed and not fully coherent. Mr. Horne's responses appeared to be delayed. The trooper saw two beer cans in the center console. Mr. Horne acted like he did not understand what the trooper was asking him to do. The trooper stated that he got him out of the car, Mr. Horne stumbled a little and staggered some. Mr. Horne held onto the back of his truck and leaned against it. Mr. Horne told the trooper that he had drank a couple of beers, but stated he was not drunk. He also told the trooper that he takes some medications for pain and anxiety. According to the trooper, Mr. Horne had a strong odor of alcohol coming from his breath. (T. 10-12). The trooper performed an alco-sensor that gave a positive reading for alcohol. A standard field sobriety test was performed. The horizontal gaze nystagmus test was

positive for four out of six clues. Due to the test results and the admittance of the appellant that he had been drinking and taking medication the trooper believed that there was probable cause to arrest the Defendant for driving under the influence (less safe). Stated alternately, the trooper derived the opinion that the defendant was under the influence of drugs and alcohol. The implied consent warning was read to Mr. Horne and the trooper requested a blood test. A blood test was drawn by the EMS station in St. George, Georgia.

At trial, crime lab reports were admitted which showed the following:

Ethyl Alcohol Result by Gas Chromatography 0.042(+/-0.003) grams per 100 ml.

Positive, alprazolam, 30 micrograms/liter (+/-8 micrograms/liter {GC/MS, LC/MS/MS}

Positive, hydrocodone, 35 micrograms/liter (+/-8 micrograms/liter {GC/MS, LC/MS/MS}

Positive, citalopram {GC/MS, LC/MS/MS}

Positive, gabapentin {LC/MS/MS} (T. 61-62)

Part Two

Enumerations of Errors

There is sufficient evidence to support the Appellant's conviction.

Statement of Jurisdiction

This court and not the Supreme Court has jurisdiction over this appeal pursuant to the Georgia Constitution and this is not a case reserved to the Supreme Court. GA. Const. 1983, Art. VI & V, III.

Part Three

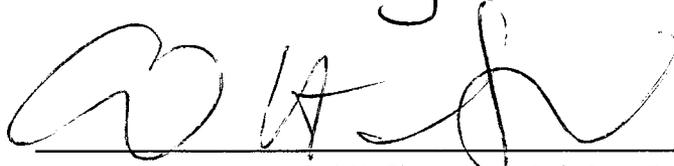
Argument and Authority

Based upon the personal observation of Trooper Taylor of three (3) less safe driving acts, the results of field side sobriety testing by the trooper of the defendant, other observations by the trooper of the defendant's person and demeanor, and the results of GBI chemical analysis of the defendant's blood, there is clearly evidence upon which a rational trier of fact could find the defendant guilty of driving under the influence of drugs and alcohol.

Conclusion

Based on the above the conviction that of the appellant for DUI should not be reversed.

This 26 day of January, 2015.

A handwritten signature in black ink, appearing to read 'E. Skorupski', written over a horizontal line.

Edmund H. Skorupski, Solicitor General

1520 Third Street, Suite D

Folkston, GA 31537

912-496-2361

IN THE STATE COURT OF CHARLTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
v.) Case No. A15A0763
)
ROBERT MICHAEL HORNE,)
Defendant.)
)

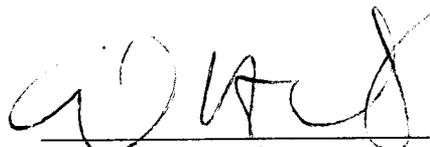
CERTIFICATE OF SERVICE

I hereby certify that I have this day served Defendant with the foregoing: Brief of Appellee, by addressing a true copy thereof to:

Court of Appeals of Georgia
47 Trinity Avenue S.W., Suite 501
Atlanta, GA 30334

and placing the same in the U.S. Postal system with sufficient postage attached so as to ensure prompt delivery.

This 26th day of January, 2015.



Edmund H. Skorupski
Solicitor General

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Folkston, GA 31537
(912) 496-2361