

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

October 5, 2015

To: Mr. James B. Smith, C3, Muscogee County Jail, 700 Tenth Street, Columbus, Georgia  
31901

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.
- 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.
- 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 The Clerk of The Georgia Court of Appeal  
STATE OF GEORGIA

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STATE OF GEORGIA

STATE OF GEORGIA

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INDICTMENT NO 13-CR-1103

VS.

\*

JAMES B. SMITH,

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Defendant

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Brief IN Support of Amended Motion for New Trial

Now I the above named defendant comes before this court seeking the Georgia Court of Appeals from the decision of the Superior Court of Muscogee County, Georgia, date July 21, 2015, wherein the court denied defendant's motion for new trial, as amended. The offense for which defendant was convicted was Child Molestation.

To the court I would bring before you the true and correct facts without a doubt and point out to this court as well the many errors committed by the Superior Court of Muscogee County. By the proof's of the court transcript that I the accused was convicted without any physical or scientific proof's or evidences.

Where upon the state evidences was entered in as state's exhibit No. 1, description: DVD: Children's Tree House Interview of Kah 'Dasia Kaigler, and State's exhibit No. 2, description: Swab container collected from neck of Kah 'Dasia Kaigler, said victim and State's exhibit No. 3, description: Swab container collected from mouth of Kah 'Dasia Kaigler, said

And I move to show defendant's Exhibit No. 1, description: CT Recording of all call, made by Elisha Rodgers victim mother, defendant Exhibit No. 2, description: Supplemental Police report, defendant's Exhibit No. 3, description: DVD: CHILDREN'S TREE HOUSE INTERVIEW OF Kah 'Dasia Kaigler, victim, (same as state's exhibit 1).

As I the accused James Bernard Smith moves now to show that I was clearly and solely found guilty and convicted on hearsay and the opinion of witnesses whom was lead by the prosecutor, and witness statement that was changed by detective Valerie Stinson-Holder, who also Mrs. Holder admitted to misrepresenting the facts in her police report Detective Stinson-Holder is trying to make the "stories" fit by changing u her report, and this was stated by defendant attorneys Ms. Kathryn Rhodes.

To the counsel for the state Mr. Michael Craig who during his open and closing argument repeatedly and continually called me a child molester, a coward and a pedophile. Making it look and sound to the jury as if I'd been convicted of such crime before, which I've never had such allegation brought against me before. And Judge William C. Rumer also stated to the jury that however the state is not required to prove the guilt of the accused beyond all doubt.

During the selection of the jury, several of them stated that they had either been molested, was close to someone that was a victim, or had a family member that commit such act. And these person's was skill picked and moves for grounds of a biased jury because of comments made by several of the juror. One's stating upon one's experience mean's only one thing here. Be deprived the right to an impartial jury

There were eight (8) reports written up but only one report entered into exhibit as evidence. Which now I bring to this court's attention which is true facts of the matter. (1) Not entered was the report of the initial call and report of officer Billy Smith the first to respond to the scene. (2) Not entered was the report of Columbus Fire and EMS Paramedic Ben Hardy. (3) Not entered was the report of Frank Saucier, M.D. ER physician. Not a written report by Easter Altman, RN. (4) Not entered, the interview with Elisha Rodgers at the hospital, victim mother. (5) Medical Exam Not entered, 3-14-11 Corporal Sherry Ziegler contacted Nurse Easter Altman for exam results.

Nurse Altman stated Dr. Frank Saucier examined the victim and he did not find any evidence of sexual trauma. (6) Nurse Altman collected the victim clothing and gave them to detectives, not entered into exhibit. (7) Once victim returned home detectives Stinson and Ziegler collected the bed sheets from victim bed, detectives also took crime light to look for possible suspects saliva on victim face.

Possible sample collected from left side of victim face and neck with a Q-tip and saline solution. Also oral samples collected from victim mouth. (8) Evidence transported to G.B.I. State Crime Lab by detectives Stinson and Ziegler, two samples. (9) Also not entered into exhibit, the results and conclusions of report from Crime Lab. (10) And also not entered was the phone call and conversation with S.A.N.E. Nurse (Cathy Cooley) (11) Not entered was warrant obtained by Corporal Valerie Stinson for suspect and accused on 3-21-11 seven days afterwards.

I would like to now address the court as to the fact that Ms. Elisha Rodgers and my self were in a relationship at the time of this

ON 3-14-2011 I arrived at Ms. Elisha Rodgers apartment in the early morning hour around four (4) A.M. . . . This is about my 5<sup>th</sup> time at visiting Ms. Rodgers apartment at which it was only ONE TIME before this time that her (Ms. Rodgers) and I didn't have sex. ON the morning in question Ms. Rodgers and I had sex on her bed room floor.

And this was due to the fact that Ms. Rodgers younger daughter Janiya Riser was asleep in Ms. Rodgers bed. This is why I was on the floor when Ms. Rodgers woke me up the morning of said allegation was made. NOTE: the fact that I the accused and Ms. Rodgers was romantic involved with each other was tryed to be kept from the trial court and jury. And let it be known to the court, that I NEVER had a change of clothes at Ms. Rodgers. And the only clothes I would have there, would be the ones I would be wearing.

I only slept on the floor with Ms. Rodgers only on the morning of 3-14-2011, and I only showered at Ms. Rodgers apartment ONCE and it was on said date. I was only in the company of Ms. Rodgers kids ONCE. And that was the time she introduced me to them. This was the very first time and only time I visited Ms. Rodgers apartment before any after midnight.

In my court transcript you will find that Dr. Saucier has ~~only~~ given testimony only ONE other time prior to this time on the stand. Which raise the question on Dr. Saucier ability as to him being an expert witness in such a case as this. As well as the other witnesses Ren Hardy, Billy Smith, Valerie Havier, Foster Altmann, Antae Searest.

and Cathy Cooley. WITNESSES that was tagged as being expert witness for the state in such matter. Just because a person works in a field for a certain length of time, does not make one an expert. Thus goes for each of the state witnesses which was tag as an expert witness, and those that wasn't.

I bring before you Kah' Dasia Kaigler whom made a number of inconsistent statements about what happened and what time it all took place. And the number of times she accuse came in and out of her bed room. Also about the number of time she accused changed clothe. And she gave an incorrect report about the time all this supposedly took place.

Now I would like to bring to mind to this court, that I am going to point to the fact that it's not one child upon the face of this earth that don't lie. And I'm talking about on a daily basis at some point and time. Children also prone to cry and will act out on the things they see on T.V., they hear about, or something that happen to some one else. Which we know this to be true from the many happening going on across our country, city's and towns.

That people are copying the pattern of other in many ways and our youth is being badly influenced by T.V., video games, peers, and most of all. The internet and it's many online sites which children has no need at coming across at all. So I'm asking this court to understand that we are not questioning the fact that don't lie. For any one with children know that answer to be, a child will lie.

What I am bringing before this Court is, there was some type motive that cause Kah'Dasia Kraigler to fabricate such a lie and false allegation. This Court if it will please look at the overall facts that stand out and point to a wild tale made up by a young teenage girl. Whom gave a number of different accounts as to what was supposedly happened.

Let's look at a few key points, there is no circumstantial evidence to corroborate none of victim statements. Mr. Craig stated to the jury that Kah'Dasia Kraigler's word alone can prove this case beyond a reasonable doubt. Leading the jury to believe that no sufficient evidence is needed or nothing sufficient to establish a fact of guilt is needed. Just words of the witnesses and most of all the sole word of the victim.

Mr. Craig stated to the jury that Kah'Dasia came in the first time and told you what he did to her and she -- Mr. Craig continued to lead the jury by stating in his words, who did this to you? Oh, he's right there. Was there any doubt? Was there any hesitation? At that moment, at that second, the presumption of innocence gone. Gone not because I'm saying that. Because that's the law. This in turn is telling the jury that all you need to convict is some one's word. Not facts or evidence.

Mr. Craig also repeated to the jury what Kah'Dasia gave in a statement as to what happened and that the accused tried to put his penis inside her, but it wouldn't fit. And fact is it's no medical proof to show any signs of this happening at all.

Mr. Craig stated to the jury, Mr. KOWAN, my co-counsel and I, the first day when we met you all, speaking to the jury and we picked our jurors -- our jury, we just had to shake our heads. We had to shake our heads that 13 out of 40 people -- 13 of 40 had either been molested.

It was clearly proven that the victim made a number of contradictory statements. As well as Ms. Rodgers, victim mother, JANIYA RISEY, victim sister, detective Holder, RN, ALTMAN, Ms. COOLEY SANE NURSE, Dr. SAUCIER, paramedic ~~SMITH~~<sup>Hardy</sup> and Officer Smith. All had inconsistent statements as to the fact that not one had any physical evidence to support their statement. Nor the allegation made.

There are many discrepancy in victim and witnesses testimony which this constitute false or misleading testimony sanctioned by the state. I the accused shed light upon the fact that my rights were violated by the state's complicity in knowing use of fraudulent and misleading testimony concerning the examination of the victim.

Also I would like to take time here and point to the fact that on 12-5-2013, evidence was delivered to the jury at 11:54 a.m. and jury took lunch at 12:33 p.m. resume at 2:00 p.m. and they ended for the day at 4:57 p.m. ON the next day 12-6-2013 they resumed deliberation at 9:00 a.m. and at 10:40 a.m. is when the jury handed down a hung jury. At 11:10 a.m. the judge asked what is the vote count. Answer given was 9 guilty 3 not guilty,

THEN AT 11:17 A.M. 12-6-2013 JUDGE STATED, I WILL GRANT A TWENTY MINUTE BREAK. WHEN YOU RETURN, CONTINUE TO DELIVERATE. I HAVE ORDERED LUNCH TO BE DELIVERED TO YOU AT TWELVE (12) NOON. THEN AT 1:12 P.M. A VERDICT WAS REACHED AND IT WAS GUILTY BECAUSE THE JURY WAS FORCED TO RETURN AND COME BACK WITH A GUILTY VERDICT. ALL THEIR JURY NOTES POINT TO THE FACT THEY WERE TIRED AND READY TO GET THIS OVER AT ANY COST NO MATTER BE IT RIGHT OR BE IT WRONG. THEY JUST WANT IT TO END SO IT WOULDN'T EFFECT THEIR LIVES NO LONGER.

AS I COME TO A CLOSE, I WANT TO ASK THIS COURT TO LOOK AT THE FACT THAT FIRST OF ALL. MS. RODGERS AND HER KID'S LIE ABOUT ME BEING JUST SOME HOMELESS FRIEND THAT HAD NO PLACE TO STAY WHICH IN FACT MY SELF AND MS. RODGERS WERE ROMANTICALLY INVOLVED WITH EACH OTHER.

AND MY VISITS WAS IN THE VERY LATE NIGHT HOUR AS IT WAS BROUGHT OUT THAT ONE 3-14-2011 I ARRIVED AT MS. RODGERS AT 4:00 A.M. AND HER KIDS HAS TO BE UP AROUND 5:45 A.M. AND 6:00 A.M. TO GET READY FOR SCHOOL AND AT THE BUS STOP BY 6:35 A.M.

SO I'M STATING TO YOU HERE TO KEEP IN MIND THAT I AND MISS. RODGERS HAD SEX ON HER BED ROOM FLOOR AND WHEN THAT ENDED. IT WOULD PUT THE TIME AROUND 4:45 TO ABOUT 4:55 A.M. WHICH MEAN IT NOT ENOUGH TIME TO DO ALL THE WALKING BACK AND FORTH AS THE VICTIM STATED. NOR THE CHANGING OF CLOTHES WHICH WOULD TAKE TIME AS WELL. AND AS YOU CAN SEE BY REPORT THAT MS. RODGERS SAID SHE WOKE ME UP. WHICH WAS BEFORE 7:00 A.M.

I have pulled case file upon case file at which I could have quoted one after the other. But I am compelled to come to this court hoping to shine light on a grave wrong doing. And a false conviction by the errors and misconduct of said trial court.

And I am asking this court as in my prayers, asking the God of all to have mercy upon. And see the truth as it stands and I have done my best to point that out to you and your court. I am not a saint, but I may be call many things, but this is something I could never bring my self to do. And it no way I could have harm that child or any other child.

Please let the pages of my transcript speak the truth to you. And see that it no evidence to back the victim allegations or testimony. And as I'd like to end by stating that on August 19<sup>th</sup>, 2015 I witness on local news that the sex crime unit was terminated. And lead detective over this case was terminated for falsifying her reports. Which was pointed out of her doing in my case, which she admitted she did. To make it fit was her words.

Now I thank you and this court for you taking a deep look into this case and make right the wrong. For my life is in the hands of this court. For I am doing everything in my power to fight for my freedom and a start at making a better life for myself. This I didn't do or something like this has never cross my mind as to hurt some one.

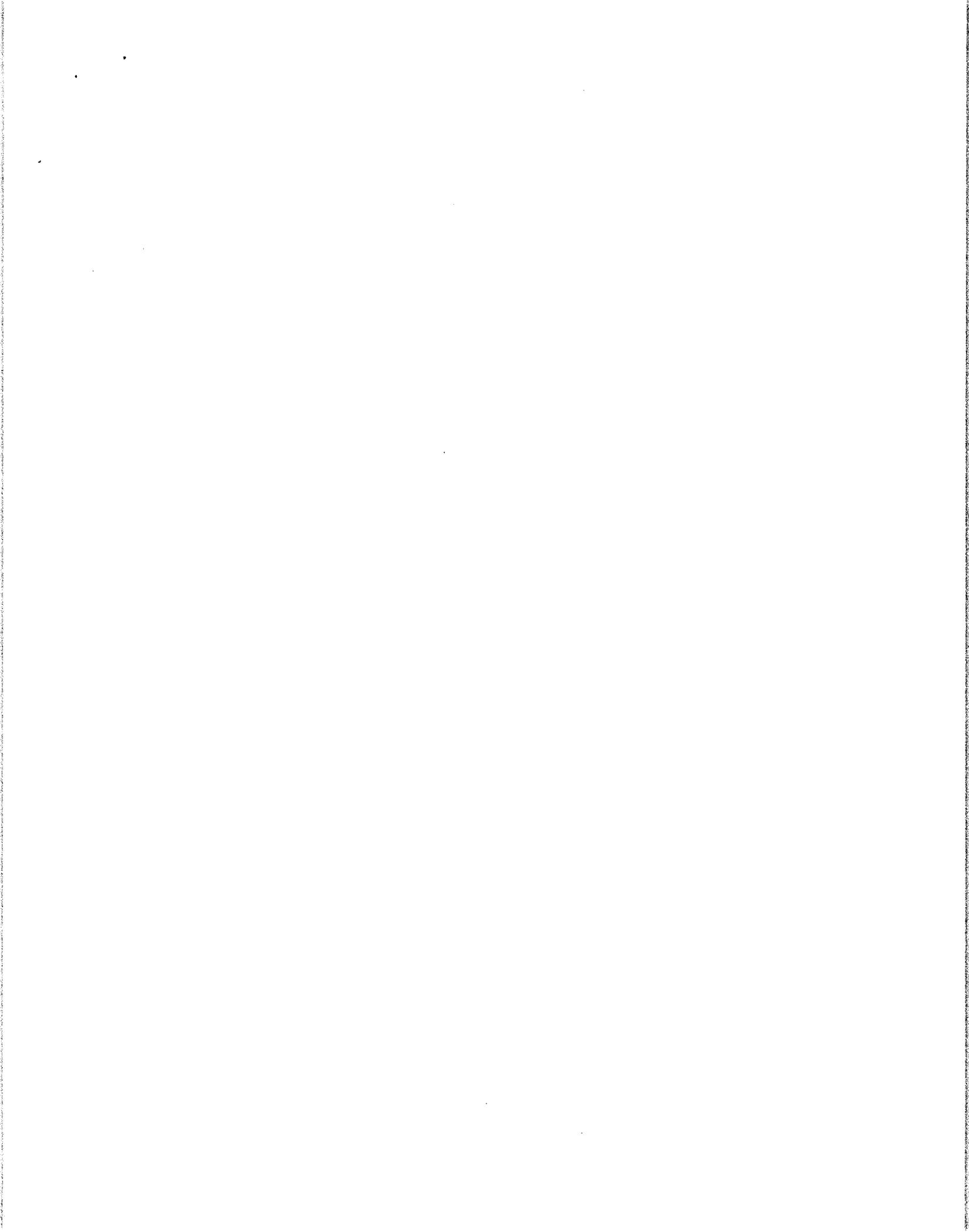
IN Closing I wish to leave with this Court some words of truth.

The trial transcript is the words that I leave with you doubt, doubt, doubt - is what it is full of. Hoping that this Court grant me a NEW trial.

Thank you again, and I look forward to hearing from your Court... God's speed to all.

Respectfully,  
James B. Smith

10/01/2015



1. Plain Error is that which is so clearly erroneous as to result in a likelihood of a grave miscarriage of justice or which seriously affects the fairness, integrity or public reputation of a judicial proceeding. MEEKER V. STATE, 282 Ga. App. 77, 637 S.E. 2d 806 (2006).

2. PAFFEL V. STATE, 282 Ga. 412, 651 S.E. 2d 55 (2007), found an violation of O.C.G.A. § 17-8-57 requires reversal and any curative instruction given by the court, no matter how thorough and legally accurate, can never result in a finding on appeal that the violation is "harmless" error. The court went on to address the waiver issue by stating that, "It follows that no waiver of this issue occurred when defense counsel failed to renew (emphasis added) the motion for mistrial after the giving of legally - ineffective instructions."

3. "It is error for any judge in any criminal case, during its progress or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused. Should any judge violate this code section, the violation shall be held by the Supreme Court or Court of Appeals to be error and the decision in the case reversed, and a new trial granted in the court below with such directions as the Supreme Court or Court of Appeals may lawfully give" O.C.G.A. § 17-8-57

4. The credibility of any witness is solely within the province of the jury. O.C.G.A. SEC. 24-6-20.

5. THE STATE'S EXPERT MAY NOT BOLSTER THE CREDIBILITY OF ANOTHER WITNESS. PATTERSON V. STATE, 278 Ga. App. 1168

6. IMPROPER FOR PROSECUTING ATTORNEY TO TELL THE JURY, "IF THE CAR YOUR [THE JURORS] DROVE HERE TODAY IS STOLEN BY SOME CAR THIEF AND THE [DEFENSE ATTORNEY] REPRESENTS THE CAR THIEF, HE WOULD ARGUE THAT IT DIDN'T HAPPEN." WIFFIN V. STATE, 291 Ga. App. 657, 662 S.E.2d 767 (2008).

7. HELD ENTIRELY INAPPROPRIATE FOR PROSECUTOR TO TELL THE JURY HE WAS OFFENDED THAT THE DEFENDANT AND HIS ATTORNEY ACCUSED THE OFFICERS IN THIS CASE OF LYING. INEFFECTIVE ASSISTANCE OF COUNSEL NOT TO OBJECT TO THIS REMARK. CANTRELL V. STATE, 290 Ga. App. 651, 660 S.E.2d 468 (2008).

8. EGREGIOUSLY IMPROPER ARGUMENTS MAY REQUIRE REVERSAL EVEN IN ABSENCE OF OBJECTIONS. PARKS V. STATE, 254 Ga. 403, 330 S.E.2d 686 (1985).

9. IT IS A BRIGHT-LINE RULE IN GEORGIA THAT THE STATE MAY NOT COMMENT ON EITHER A DEFENDANT'S SILENCE PRIOR TO ARREST OR FAILURE TO COME FORWARD VOLUNTARILY. REYNOLDS V. STATE, 285 Ga. 70, 673 S.E.2d 854 (2009); LANDERS V. STATE, 270 Ga. 189, 190, 508 S.E.2d 637 (1998); MALLOY V. STATE, 261 Ga. 625, 629, 630 (5), 409 S.E.2d 839 (1991), OVERRULED ON OTHER GROUNDS, CLARK V. STATE, 271 Ga. 6, 9-10 (5), 515 S.E.2d 155 (1999).

10. "A WITNESS GENERALLY IS NOT PERMITTED TO EXPRESS HIS OR HER OPINION REGARDING AN ULTIMATE ISSUE IN THE CASE BECAUSE TO DO SO WOULD INVADe THE FACT-FINDING PROVINCE OF THE JURY..." MEDLOCK V. STATE 263 GA. 246, 248(3), 430 S.E. 2d 754 (1993).

11. "[T]o WARRANT A CONVICTION ON CIRCUMSTANTIAL EVIDENCE, THE PROVED FACTS SHALL NOT ONLY BE CONSISTENT WITH THE HYPOTHESIS OF GUILT, BUT SHALL EXCLUDE EVERY OTHER REASONABLE HYPOTHESIS SAVE THAT OF THE ACCUSED." OCGA SEC. 24-4-6; MARSHALL V. STATE, 285 GA. 351, 353-354, 676 S.E. 2d 201 (2009); MIMS V. STATE, 264 GA. 271, 443 S.E. 2d 84 (1994); BRADWELL V. STATE, 262 GA. App. 651, 586 S.E. 2d 355 (2003); ROBINSON V. STATE, 261 GA. 698, 410 S.E. 2d 116 (1991).

12. IN U.S. V. TURNER, 558 F. 2d 535 (9th Cir. 1977), AN ERROR IN RESTRICTING THE ~~EVIDENCE~~ EXERCISE OF PEREMPTORY CHALLENGES RESULTS IN AN AUTOMATIC REVERSAL... THE DEFENDANT NEED NOT SHOW THAT HE WAS PREJUDICED BY THE ERROR.. (SWAIN V. ALABAMA), SUPRA, 380 U.S. AT 219, 85 S. CT. A 835, THE DENIAL OR IMPAIRMENT "OF THE RIGHT OF EXERCISING PEREMPTORIES" IS REVERSIBLE ERROR WITHOUT A SHOWING OF PREJUDICE "CITATION OMITTED."

U.S. V. BOYD, (5th Cir. 1971) 466 F. 2d 1267, 1275, N. 27. IT IS ERROR FOR A COURT TO FORCE A PARTY TO EXHAUST HIS PEREMPTORY CHALLENGES ON PERSONS WHO SHOULD BE "EXCUSED" FOR CAUSE, FOR THIS HAS THE EFFECT OF ABRIDGING THE RIGHT TO EXERCISE PEREMPTORY CHALLENGES.

13. BERGER V. UNITED STATES, 295 U.S. 78, 55 S. CT. 629, 79 L. ED. 1314 (1934) THE COURT STATED THE GENERAL RULE THAT ALLEGATIONS AND PROOF MUST CORRESPOND.