

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

April 17, 2015

To: Mr. Bernard Williams, GDC312681, Smith State Prison, Post Office Box 726,
Glennville, Georgia 30427

Case Number: _____ Lower Court: _____ County Superior Court

Court of Appeals Case Number and Style: A13A0987. Williams 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.
- 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.
- 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.
- Enclosed is a copy of the case you requested a copy of. We normally charge \$1.50 per page but it appears that you or your attorney may not have received a copy.**

Note: The Court often does not publish an opinion for various reasons. Typically, the Court will not publish an opinion if there is no precedential value in publishing the opinion.

Steve Castlen - Mr. Williams letter

From: Steve Castlen
To: Lola Diamond
Date: 4/17/2015 1:18 PM
Subject: Mr. Williams letter

Mr. Williams,

Here is a copy of the case that you requested a copy of. We normally charge \$1.50 per page, but it appears that you or your attorney may not have received a prior copy.

Note the Court often does not publish an opinion for various reasons. Typically, the Court will not publish an opinion if there is no precedential value in publishing the opinion.

Steve

Stephen E. Castlen
Clerk/Administrator
Court of Appeals of Georgia
47 Trinity Avenue, S.W.
Suite 501
Atlanta, Georgia 30334

THIRD DIVISION
ANDREWS, P. J.,
MILLER and DILLARD, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
<http://www.gaappeals.us/rules/>

September 17, 2013

NOT TO BE OFFICIALLY
REPORTED

In the Court of Appeals of Georgia

A13A0987. WILLIAMS v. THE STATE.

ANDREWS, Presiding Judge.

Bernard Williams was found guilty by a jury of the offense of burglary. He contends on appeal that the trial court erred by admitting evidence showing that the victim identified him – a few minutes after the burglary and at the trial – as the man she saw inside her house at the time of the burglary. For the following reasons, we affirm.

1. On appeal from the judgment of conviction, Williams is no longer entitled to a presumption of innocence, and the evidence is viewed in the light most favorable to the guilty verdict. *Parker v. State*, 220 Ga. App. 303 (469 SE2d 410) (1996). Viewed in this light, the evidence showed the following: At the October 2009 trial, the victim testified that in August 2009, as she entered her house after working in the

yard, she confronted a man inside the house during daylight hours who she did not know and who had no permission to enter the house. She described how she confronted and spoke to the man face-to-face for three to four minutes asking him what he was doing in her house. She described the man in detail including what he was wearing and the fact that he was carrying a black attache case and a small black bag. After making excuses to the victim as to why he was in the house, the man left and the victim immediately discovered numerous items of jewelry and watches missing from the house. The victim identified Williams at the trial as the man she saw and spoke to in her house. She also identified Williams at the trial as the man she previously identified in a police one-on-one show-up shortly after the burglary. The victim testified that, a few minutes after the burglary, police asked her to look at a man they had stopped a short distance from her house, and that she "looked at him, and he looked like him, and then the policeman showed me [the man's driver's] license, and I said by God that's him; and that was him."

Evidence showed that, after the man left the victim's house on foot, she immediately called police and reported the burglary and described the man. Police responded to the call within two or three minutes, and a few minutes later stopped Williams, who matched the description and was walking a short distance from the

victim's house. Williams was carrying a black attache case, which was later identified by the victim as matching the case carried by the man she saw inside her house. Inside the attache case, police found a black bag containing numerous items of jewelry and watches, which were later identified by the victim as items stolen from her house on the day of the burglary. Also inside the attache case, police found fliers advertising handyman services in the name of Williams, which the victim later identified as matching a flier handed to her by the man she saw inside her house. In between the location of the victim's house and where Williams was stopped, police found a hat sitting on top of a bush. The victim identified the hat as matching the hat worn by the man she saw inside her house.

The evidence was sufficient for the jury to find beyond a reasonable doubt that Williams was guilty of burglary in violation of OCGA § 16-7-1 by unlawfully entering the victim's house without authority with the intent of committing a theft therein. *Jackson v. Virginia*, 443 U. S. 307 (99 SCt 2781, 61 LE2d 560) (1979).

2. Williams contends that the trial court erred by denying his pre-trial motion in limine by which he sought: (1) to exclude evidence of the victim's prior one-on-one show-up identification of him on the basis that the show-up procedure was impermissibly suggestive and created a substantial likelihood of misidentification;

and (2) to exclude the victim's in-trial identification of him on the basis that it was tainted by the show-up identification. We find no error in the trial court's denial of the motion in limine and admission of the pre-trial and in-trial identification.

Even assuming the one-on-one show-up procedure was impermissibly suggestive, the trial court ruled that the victim's show-up identification of Williams was admissible because, under the totality of the circumstances, there was no substantial likelihood of misidentification. *Jones v. State*, 273 Ga. 213, 215-216 (539 SE2d 143) (2000); *Butler v. State*, 290 Ga. 412, 414-416 (721 SE2d 876) (2012). Evidence presented at the hearing on the motion in limine showed that the victim saw and focused on the man she saw inside her house; that she spoke to and had ample opportunity to observe the man; and that she identified him at the police show-up about 20 minutes after the burglary. In determining whether there was a substantial likelihood of misidentification, the trial court evaluated the evidence as the trier of fact judging the credibility of the witnesses and the weight and conflict in the evidence. *Jones*, 273 Ga. at 216. "Where evidence supports the trial court's ruling, we will not disturb that ruling." *Id.* There was evidence supporting the trial court's ruling, so we find no clear error in the court's conclusion that, under the totality of the circumstances, there was no substantial likelihood of misidentification. *Williams*

v. State, 320 Ga. App. 831, 834-835 (740 SE2d 766) (2013). Because the trial court did not err in ruling that there was no substantial likelihood of misidentification in the pre-trial show-up, “then both the pre-trial and in-court identifications are admissible.” *Jones*, 273 Ga. at 216.

3. Williams contends that the trial court erred in admitting the victim’s pre-trial identification of him because it was aided by the victim’s view of his driver’s license, which was not offered into evidence. Accordingly, Williams contends that, in violation of the best evidence rule in former OCGA § 24-5-2, the trial court erroneously admitted secondary evidence – testimony as to the victim’s pre-trial identification – without showing that primary evidence – the driver’s license – was unavailable. Because this contention was not the basis for Williams’s pre-trial motion in limine or to suppress or any objection made at trial, this enumeration was not preserved for appellate review.

Judgment affirmed. Miller and Dillard, JJ., concur.

FREEDOM OF INFORMATION REQUEST

Name: Bernard Williams GDC 312681
Address: Smith State Prison PO Box 726
City / State: Glennville Georgia 30427

Date: 4-8-15

FREEDOM OF INFORMATION OFFICER

Name of Agency: Clerk's Office, Georgia Court of Appeals
Address: Suite 501, 47 Trinity Ave SW
City / State: Atlanta Georgia 30334

TO WHOM IT MAY CONCERN:

This request is made under the Freedom of Information Act (FOIA), 5 U.S.C. sec. 552 [and the Privacy Act 5 U.S.C. 552a], and Ga. Code Ann. 50-18-75.

Please send me copies of the document (s) described below and the name, places and period of times which I have described.

Document (s) requested are as follows;

Request Williams v. State NO A 13A0 987,
Ruled September 17, 2013, (unpublished)

This case request to be public, internet
Cited case law as above number

If a mistake of the court ruling I have a right to
be notified of the error under case no above
Or attached sheets:

As you know, the Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. therefore, I will expect you to send me all nonexempt portions of the records which I have requested, and ask that you justify any deletions with reference to specific exemptions of F.O.I.A.

The information request is not to be used for commercial benefit, so I do not expect to charge fees for your review of the material to see if it falls within one of F.O.I.A.'s exemptions.

[Option 1]

I promise to pay reasonable search and duplication fees where the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the requester. This request should be exempt from all fees because

3

Bernard Williams GDC# 312081
Smith State Prison
Po Box 726
Glennville Georgia 30427

2015 APR 14 PM 1:39
GEORGIA COURT OF APPEALS

Clerk's Office
Georgia Court of Appeal
Suite 501
47 TRINITY AVENUE SW.
Atlanta Georgia 30334

offense: Burglary
OCGA: 16-7-1

RE: Williams V. State
NO - A13A0987

SUBJECT: Ruled Judgment Affirmed September 17, 2013
NOT TO BE OFFICIALLY REPORTED, (un Published).

Dear Clerk,

I have NOTICE THAT Georgia COURT OF APPEALS
ON SEPTEMBER 17, 2013 Ruled Judgment Affirmed
NOT TO BE OFFICIALLY REPORTED.

Clerk, I havins SEEN Wherein The above
Case Number OPEN FOR The Public OF The STATE OF
Georgia, NOR The above Case Number Williams V State
NO A13A0987 ON The Public INTERNET
(un Published).

in This Case either The Georgia COURT
OF APPEALS Judges' Rule MY case under another
Cited Case, under Case Number Williams V STATE
A13A0987

in. What Reason Is This Public case
NOTICE OF (unPublished) - Whereat law library
Cited Case law Computer - The above Number show
William V State" but in a different (BURSLARY)
Case OF MY Case.

The Question Raised either Georgia
COURT OF APPEALS Ruled on The Wrong Case Within
Charge OF The Same Case Number A13A0987

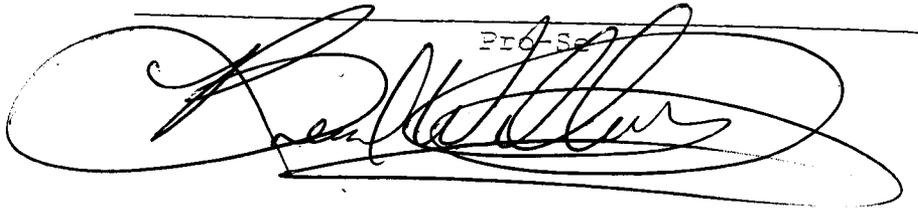
Clark's Can you Please look into This
matter To show Cause Why This Case Can't be
Cited on Computer For The Public Why
(unPublished).

[Option 2]

The party herein is indigent and unable to pay the cost of the reproduction and request that the same be made in Forma Pauperis in accord with U.S.C. 1915.

If you deny this request, however, please notify me if the fees will exceed \$, so I can decide whether to pay the fees or appeal your denial of my request for a waiver.

Respectfully Submitted;

A large, stylized handwritten signature in black ink, appearing to read "Paul Walker". The signature is written over a horizontal line that has the word "Process" printed on it.

Please Serve:

Clerk's Office
Georgia Court of Appeals
Suite 501
47 Trinity Ave SW
Atlanta Georgia 30334

DECLARATION UNDER PENALTY OF PERJURY

YOU MUST DECLARE UNDER PENALTY OF PERJURY THAT THE ANSWERS AND INFORMATION YOU HAVE GIVEN HERIN ARE TRUE AND CORRECT. GIVING FALSE ANSWERS OR INFORMATION WILL SUBJECT YOU TO PERJURY CHARGES UNDER BOTH FEDERAL AND STATE LAW.

Understanding the above, I declare under penalty of perjury that the foregoing answers and information provided me are true and correct.

Executed this 8th day of April, 20 15



Signature of Declarant

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing document(s) upon the below listed person(s), by depositing a copy of same in the United States Mail, in a properly addressed envelope with adequate postage thereon to ensure it reaches its destination.

This 8th day of April, 2015.

/s/ 

PERSON(S) SERVED:

/s/ Bernard Williams

Clerk's Office
Georgia Court of Appeals
Suite 501
47 Trinity Ave SW
Atlanta Georgia 30334,