

# COURT OF APPEALS OF GEORGIA

## RETURN NOTICE

October 28, 2015

To: Mr. Chauncey N. Barnwell, Brown Barnwell, P.C., Post Office Box 14121, Savannah, Georgia 31406

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

Court of Appeals Case Number and Style: A15A0264. Arkeem Jamal Hopkins 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.
- Our records indicate you have not been admitted to the Bar of the Court of Appeals of Georgia. Please go to our website for admission instructions at: [www.gaappeals.us](http://www.gaappeals.us). There are several options available. If you have been admitted, please phone our office with the date on your certificate.**
- Electronic filing is mandatory in this Court. The following Rule 46 became effective January 1, 2015.**

### XXII. ELECTRONIC FILING OF DOCUMENTS

#### Rule 46. Electronic Filing of Documents.

Counsel is required to use the Court's electronic filing system and to follow the policies and procedures governing electronic filing as set forth in the Court's electronic filing instructions. The Clerk of Court may grant a request for exemption from mandatory electronic filing for good cause shown. An adverse decision by the Clerk of Court may be appealed by motion to the Court via a paper filing.

Rule passed October 21, 2014 - effective January 1, 2015

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

To: *Chauncey Barnwell*  
Docket Number: *A16A0264*

Style: *Cakeem J. Hopkins 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: *all attorneys are required to e-file Rule 46*

For Additional information, please go to the Court's website at: [www.gaappeals.us](http://www.gaappeals.us)

**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

**ARKEEM JAMAL HOPKINS**

**APPELLANT**

**vs.**

**THE STATE OF GEORGIA**

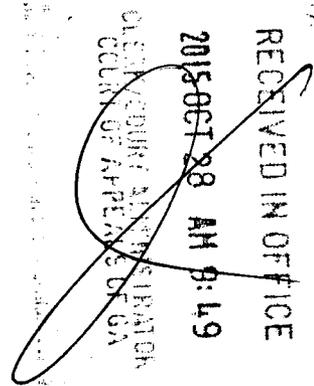
**APPELLEE**

**Case Number A16A0264**

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**APPELLANTS BRIEF**

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**Chauncey N. Barnwell  
Brown Barnwell, P.C.  
Georgia Bar No. 728188  
P.O. Box 14121  
Savannah, GA 31406  
843.422.2057  
[brownbarnwelllaw@gmail.com](mailto:brownbarnwelllaw@gmail.com)  
Attorney for Appellant**

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### PART ONE

## **I. PROCEEDINGS BELOW AND MATERIAL FACTS**

On January 20, 2015, Mr. Arkeem Jamal Hopkins (“Hopkins”) was found guilty by a jury comprised of six of his peers of the following offenses: DUI Less Safe Alcohol, Obstruction, Interference with Government Property, Failure to Stop at a Stop Sign, Failure to Register Automobile and one count of Simple Assault. The trial court sentenced Hopkins to 24 months of probation, with seventy (70) days to serve at the Chatham County Detention Center, two hundred and forty (240) hours of community service and an eleven hundred (\$1100.00) dollar fine.

Hopkins filed a Motion for New Trial on February 3, 2015. Hopkins expressed through his Motion for New Trial that the jury was improperly inflamed during closing arguments when the prosecuting district attorney stated to the jury that “the most dangerous part of a police officers job is making a traffic stop and that Hopkins could have had a firearm in his possession.” TR-140; Line 14-15. Later, the prosecutor expressed that “when you drink and drive on our streets you’re not just endangering yourself, you’re endangering everybody.” TR-148; Line 24-25, TR-149; Line 1.

## **II. STATEMENT OF HOW EACH ENUMERATION OF ERROR WAS PRESERVED**

This appeal arises from statements made by the prosecution during closing arguments. The prosecution expressed that the Defendant could've had a gun during the traffic stop which lead to the arrest. TR-140; Line 14-15. The defense immediately motioned the trial court for a mistrial. TR-140; Line 24-25.

Second, the prosecution made the "Golden Rule" argument by insinuating that "when you drink and drive you're not just endangering yourself, your endangering everybody." TR-148; Line 24-25, TR-149; Line 1. The defense then rightfully objected to the line of closing. TR-149; Line 3-4.

Further, the prosecution explained to the jury that they should "send the defendant a message, send all the people that drink and drive a message, and find him guilty. TR-149; Line 16-18. Again, the defense put the trial court on notice that the prosecution's argument made the trial fundamentally unfair. TR-149; 19-21.

## **STANDARD OF REVIEW**

### **A. Abuse of discretion**

Where a determination by the trial court involves an exercise of discretion, the standard of review is abuse of discretion, which is at least slightly less deferential than the any evidence test. Reed v. State, 291 Ga. 10 (Ga. 2012). By deduction, therefore, the abuse of discretion standard is different from and not quite as deferential as the clearly erroneous test. *Id.* Courts of record retain full control over orders and judgments during the term at which they were made, and, in the exercise of a sound discretion, may revise or vacate them. Such discretion will not be controlled unless manifestly abused. Hayes v. State, 298 Ga. App. 419 (Ga. Ct. App. 2009).

## **PART TWO**

### **III. ENUMERATION OF ERRORS**

The error presented for appeal is:

1. Whether the trial court erred in failing to grant Defendant's motion for a mistrial based upon the prosecution's improper closing argument?

#### **IV. ARGUMENT AND CITATION OF AUTHORITIES**

##### **A. The Trial Court Erred in Failing to Grant Defendant's Motion For Mistrial Based Upon the Prosecution's Improper Closing Argument**

This application presents the familiar standard on review that this Court will not interfere with a trial conviction absent prosecutorial dictation that renders the trial fundamentally unfair. Darden v. Wainwright, 477 U.S. 168, 181 (1986). The practical question posed under this analysis is framed as to whether or not the defendant's due process rights were violated as a result of the prosecutor's improprieties during closing argument. Id. Evidence introduced by a prosecutor during closing which has not been tendered at trial and subject to a thorough and sifting cross-examination violates due process and fairness. Williams v. State, 254 Ga. 508, 510 (1985).

In this case, the prosecution proceeded under the mistaken misunderstanding that a gun was involved in this case. There was never any mention of a gun during the entire trial until stated by the prosecution. The defense was unable to respond the mischaracterization made and as a result due process was violated.

WHEREFORE, Defendant Arkeem Jamal Hopkins respectfully requests that the Court reverse Judgment as was entered against him on January 20, 2015.

Respectfully submitted, this 26<sup>th</sup> day of October, 2015.

/s/Chauncey N. Barnwell  
Chauncey N. Barnwell  
Georgia Bar No.: 728188

BROWN BARNWELL, P.C.  
P.O. Box 14121  
Savannah, GA 31406  
T: (843) 422-2057  
F: (866) 469-9898

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of Appellant's Brief was perfected at or before the filing of this Brief by email to the following:

Lindy Garvin  
ljarvin@chathamcounty.org

Respectfully submitted,

This 26<sup>th</sup> day of October.

/s/Chauncey N. Barnwell  
Chauncey N. Barnwell  
Georgia Bar No.: 728188

BROWN BARNWELL, P.C.  
P.O. Box 14121  
Savannah, GA 31406  
T: (843) 422-2057  
F: (866) 469-9898