

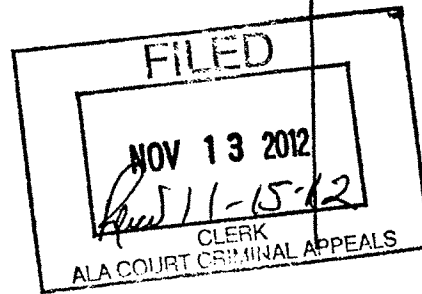
In The Court of Criminal Appeals of Alabama

Lemuel Leonard Gay  
Appellant, Pro se

Case no:  
CR-11-1668

v.

State of Alabama  
Defendant



Appellant, Lemuel Leonard Gay (Pro se), now comes and response to this Court of Appeals Order of October 25, 2012. Requesting that Appellant prepare a list of each and every point with the issues Appellant wants to be considered on his appeal from Madison County Circuit Court: CC-11-2997)

ADDITIONAL ISSUES, POINTS OF CONSTITUTION MATTERS

Appellant Gray, now identify and urges this Court of Appeals to consider the following matters

1.

Which Do Require Further Briefing In The Interest  
Of Justice In CR-11-1668 :

"A Defective Representative"

A. Whether or not Trial Counsel Was Ineffective For  
The Following Failure(s).

1. Failed To Filed A motion Within 30 Days For NEW  
Trial Based on the Fact(s) viz, "Insufficiency Of  
The Evidence".

2. Failed To Request A lesser-Included Offense In-  
struction And A Lesser Offense Of §13A-8-11 Code  
1975. viz §13A-2-20 (i.e. Parties to offense) And or  
§13A-2-23 (2) i.e Aids or Abets, (3) i.e legal Duty) And or  
§13A-2-21 And §13A-2-25 (i.e Criminal Liability Based up-  
on Behavior of Another,

3. Failed To Challenge For Cause All His Jurors who  
sitted That were victim of The Offense Charged,  
And Who Had Close Relatives That was Victims of  
The same crime or Its Kindred. Those Jurors  
Should Have Been Strike. SEE (CR. pg 24-44).

4. Failed To defend Appellant Constitutional Rights)  
To Trial By Jury Art. 1 §11 Const. Ala. 1901. By Failing  
To Investigate; To Raise A Defense; To Prepare  
Prior To Trial; To Request Discovery And To put  
on witnesses In His Behalf.

5. Failed To Object To Hearsay Evidence (CR. pg 55-56) And Failed To object And Raise A Brandy Violation When The State In This case Has Intently withheld Evidence That Is Favorable To Appellant, SEE (CR. pg 56) And (R. pg 14 i.e Request To Product, Filed By Counsel Robert H. McCaleb on Sept. 13, 2012. Alone with motion To Reveal, viz. (Deals, Promises or Iduments) "Provided Co-Defendant, i.e (Robert Summers) R. pg 16 Filed Sept. 13, 2011).

Emphasis Added: These motions were GRANTED By Hon. Judge Laura W. Hamilton on September 15, 2011, CF (R. pg 19, 20).

6. Failed To Raise A 4<sup>th</sup> Amendment Constitution Violation under MAPP And DUNAWAY viz. "Due Prozess", "Illegal Evidence", "An Illegal Arrest." (CR. pg 67-68).

B. Whether or not The State Proved "Every Element" of This Offense §13A-8-11 Code 1975 For which He was Charged & Convicted:

1. motion For Acquittal Persevere This Issue For Appellant Review.. (i.e A Challenge to The Sufficiency of The Evidence, viz NO legal Evidence was Before His Juries).

2. The State Failed To make out A Prima Facie Case §12-21-35(a) code 1975. The Evidence Is Insufficient To Support This Finding of Guilty Beyond A Reason-

able Doubt Appellant Gray Committed The Crime of unlawful Breaking & Entering This Vehicle To Commit Theft, In violation of §13A-8-11 Code 1975.

3. Appellant Gray, contends In order To Establish The Corpus delicti, of §13A-8-11 Code 1975. The State "MUST" Prove: (1) Without Consent, (2) HE (Appellant) Break Into, (3) (HE) Enters This Vehicle or Any Part of A Vehicle, (4) with Intent To Commit Any Felony or Theft.

Emphasis Added: The State HAS Failed To Prove Any OF Those Elements OF This Offense. §13A-8-11 Is A Offense OF "Strict liability" (A Willful Act).

Traditional Criminal Offenses Have Always Required Both, viz An Act & An Accompanying State of mind (i.e. a mens rea); Before Criminal Liability may Be Imposed.

4. The Record And Evidence Before This Court of Appeals will Show That Appellant Gray, (1) Never HAD, or (2) WAS ever seen, nor (3) Had Possession of so called Stolen Property. (4) He was not Present At Its Commission, But (5) was At work, and (6) He was not The Persons Who Actually Committed This Act. viz (Robert Summer, Is The Person under Surveillance). Thus Appellant At most was "Accessory"- After The Fact!

5. Whether or not Trial Court Erred By Allowing Hearsay Evidence To Convict Him And Violated His Constitution Rights) By Ala. Const. Art. 1, § 11, § 13 1901.

Emphasis Added: The Alabama Supreme Court, In Satterwhite v. State 364 So.2d 359, 360 (Ala. 1978), "Held And Observed"; Hearsay Information may Serve As A Basis For An Affidavit) ; It, Also maybe used To Determine "Probable Cause" For The Issuance Of The Search Warrant, "However, "IT MAY NOT And CAN NOT Be used As "Primary Evidence To Establish Guilty During Trial".

6. Whether or not Based upon The Record, Instruction on Charge (CR pg 167-168). Did The Trial Court Judge Constructly Amend The Charge To Include These Lesser Offense Of § 13A-2-23 (i.e. Criminal Liability of Another) And § 13A-2-23 (2)(3) (i.e. He Aids or Abets), IF; so This Court Of Appeals Can Legally Find Such And Should Remand This Case For A NEW Trial.

Dated:  
11/8/12

Respectfully Submitted

Lemuel Gray  
Appellant Pro se

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Legal mail

~~Legal mail~~

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