

John A. "Trea" Pipkin III

tpipkin@co.henry.ga.us

Experience

- 1/18 – Present **Superior Court Judge, McDonough, Georgia**
**Presiding over domestic cases, various civil filings, and all felony offenses that occur within the Flint Judicial Circuit.*
- 7/12 – Present **Office of the Solicitor-General, McDonough, Georgia**
The Solicitor-General
**Supervise, direct, and manage a staff of 28 people including 11 Assistant Solicitors-General in the prosecution of all misdemeanor crimes within Henry County.*
- 9/05 – 7/12 **Flint Circuit District Attorney's Office, McDonough, Georgia**
Assistant District Attorney.
**Prosecute all felonies within Henry County including capital crimes; present criminal cases to the Grand Jury of Henry County; advise private citizens and victims on legal options available; research law and draft motions/briefs on behalf of the State of Georgia.*
- 1/06 – Present **Gordon State College, Barnesville, Georgia**
Adjunct Professor of Criminal Law
**Teach students at a collegiate level the study of criminal law and criminal justice courses.*
- 1/13 – 12/16 **Emory University School of Law, Decatur, Georgia**
Adjunct Professor of Law (Sex Crimes & Domestic Violence/Trial Techniques)
**Teach graduate level criminal and trial courses.*

Education

- Georgia State University College of Law, Atlanta, Georgia (JD)**
Juris Doctor, 5/05; Awards: Mock Trial Top Litigant; Student Government Vice President
- University of Georgia, Terry College of Business, Athens, Georgia**
Bachelor of Business Administration, 8/02
Major: Risk Management and Insurance
- Reinhardt College, Waleska, Georgia**
Associate of Science, 5/01
Major: Business Administration

This questionnaire is submitted in connection with a vacancy on the

Georgia Court of Appeals

1. Give your full name.

John Andrew "Trea" Pipkin III

2. State both your office and home addresses.

Office:
One Courthouse Square
McDonough, Ga. 30253



State your office telephone number, home telephone number, and cell phone telephone number.

Office: 770.288.7909



State your e-mail address.



3. Give the date and place of your birth.



4. If you are a naturalized citizen, please give the date and place of naturalization.

Not applicable.

5. Indicate your marital status; if married, the name of your spouse; and the names and ages of your children.

I married [REDACTED] September 26, 2014. We celebrated our 5th anniversary earlier this year. We do not have children.

6. Indicate the periods of your military service, including the dates, and the branch in which you served, your rank or rate.

I have never served in the military.

7. List each college and law school you attended, including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.

Georgia State University (College of Law): Juris Doctor: 2002-2005
University of Georgia: BBA in Risk Management and Insurance: 2000-2002
Reinhardt College: (College of Business): Associate of Science: 1998-2000

8. List all courts in which you are presently admitted to practice, including the dates of admission in each case. Give the same information for administrative bodies having special admission requirements.

Superior Courts of Georgia (admitted November 1, 2005)
Georgia Court of Appeals (admitted November 3, 2005)
Georgia Supreme Court (admitted November 3, 2005)

9. Are you actively engaged in the practice of law at the present time? If you are connected with a law firm, a corporate law department or a governmental agency, please state its name and indicate the nature and duration of your relationship.

I was appointed Superior Court Judge in the Flint Judicial Circuit by Governor Nathan Deal in January of 2018.

10. If in the past you have practiced in other localities or have been connected with other law firms, corporate law departments or governmental agencies, please give the particulars, including the locations, the names of the firms, corporate law departments or agencies and your relationship thereto, and the relevant dates. Indicate also any period in the past during which you practiced alone.

I was sworn in as an Assistant District Attorney (Flint Judicial Circuit) here in Georgia in 2005. I left the District Attorney's Office in 2012 to become the Solicitor-General of Henry County. While in law school at Georgia State University I worked part-time for 2 years for the Georgia Public Defender Standards Council in Atlanta.

11. Do you presently hold judicial office, or have you in the past held any such office? If so, give the details, including the court or courts involved, whether elected or appointed, and the period of service. Also state whether you have been an unsuccessful candidate for election to judicial office, stating the court and date involved.

I was appointed Superior Court Judge in the Flint Judicial Circuit by Governor Nathan Deal in January of 2018.

12. What is the general character of your practice? Indicate the character of your typical clients and mention any legal specialties which you possess. If the nature of your practice has been substantially different at any time in the past, give the details, including the character of such and the periods involved.

N/A

13. (a) Have you regularly appeared in court during the past five years?

Yes. Almost Daily.

(b) What percentage of your appearances in the last five years was in:

(1) Federal Courts (list each court): None

(2) State Courts (list all courts): Superior Court, State Court, Magistrate Court, Juvenile Court

(3) other courts (please list all states other than Georgia in which you have appeared): None

(c) What percentage of your court appearances in the last five years was:

(1) civil? 50%

(2) criminal? 50%

(d) What percentage of your trials in the last five years was:

(1) jury? 95%

(2) nonjury? 5%

(e) State the approximate number of cases you have tried to conclusion in courts of record during each of the past five years, indicating whether you were sole, associate, or chief counsel.

Note: The following information is referencing prior to becoming a Superior Court Judge.

2012: Approximately 15 to 20 trials (felony and misdemeanor) (sole on all non-murder trials) (chief counsel on one murder trial) (associate on one murder trial)

2013: Approximately 10 trials (sole)

2014: Approximately 10 trials (sole)

2015: Approximately 5 trials (sole and associate)

2016: Approximately 5 trials (sole and associate)

2017: Approximately 5 trials (sole and associate)

(f) Describe five of the more significant litigated matters which you have handled.

- **An executive vice-president with the Coca-Cola Corporation and his wife were physically and mentally abusing 2 children from the Ukraine of which the couple had adopted. The police department had become aware of the ongoing criminal activity and had begun an investigation. I was briefed into the investigation at an early stage and assisted/directed involvement on behalf of the District Attorney. In the summer of 2008, and more than a year and a half later, the case was called for trial; I tried the case as chief and sole counsel and was able to secure a conviction for both abusers.**
- **A well-known music producer shot and killed one member of his production team (entourage). Police made the arrest and a Grand Jury Indictment followed. I tried the murder case to its conclusion. Interesting fact: the majority of this case was covered by the nationally recognized Black Entertainment Television (BET) station.**
- **The Henry County Police Department attempted to effect a traffic stop on a vehicle with a busted tail light. The driver of the vehicle, wanted for several violent felonies, refused to bring his vehicle to a stop. The chase led into a residential neighborhood which culminated in the defendant attempting to injure or kill the pursuing officer by luring the officer out of his vehicle and then accelerating the vehicle toward the officer. The evidence involved with this particular trial was wide ranging with many eye witnesses. After a week of trial, the jury convicted the defendant on 6 of the 7 counts the Grand Jury had indicted on.**
- **Through the use of a federal wiretap (which I secured as an ongoing tap) our undercover task force and the Drug Enforcement Administration (DEA) were able to secure information needed to successfully prosecute a large distributor who was working out of Henry County and the South Metro Area. Based on the information gathered I was able to seize thousands of dollars, as well as to successfully prosecute the high profiled target who had been eluding law enforcement through 3 different states over a period of 5-years. The case was successfully prosecuted.**
- **After securing a Grand Jury indictment for an Aggravated Child Molestation/Incest/Rape case involving a 5-year victim (she was barely 4 at the time of the incidents) I brought the case to trial. Her biological father had been raping her for nearly 2 years with at least 3 provable incidents over that time period. Child cases are extremely difficult to prove and this case was no exception. I had some medical evidence which tended to corroborate the victim's story and I had one incident of child molestation on the victim which was circumstantially supported by another young child's testimony (to the best of my recollection this friend-witness was 6-years old). The jury deliberated for almost**

2 days but eventually convicted the father. The judge sentenced the defendant to Life plus 50-years consecutively.

(g) State with reasonable detail your experience in adversary proceedings before administrative boards or commissions during the past five years.

None

14. (a) Summarize your experience in court prior to the last five years. If during any prior period you appeared in court with greater frequency than during the last five years, indicate the periods during which this was so and give for such prior periods the same data which was requested in item 13 above.

As an Assistant District Attorney I handled numerous matters in the Superior Courts of Georgia ranging from felony jury trials to forfeiture actions on behalf of the State of Georgia. I have consistently appeared in court with the same general frequency throughout my prosecutorial career.

As a Superior Court Judge I am now in court approximately 18 of 20 workdays per month.

(b) Summarize your experience in adversary proceedings before administrative boards or commissions prior to the last five years.

None

15. Describe your appellate practice during the past five years in detail and give citations if your cases were reported.

As a prosecutor I have written and submitted many briefs on behalf of the State of Georgia to both the Court of Appeals and the Supreme Court. Those that have been reported are as follows:

Tookes v. State 310 Ga.App. 710 (2011)

Thomas v. State 300 Ga.App. 265 (2009)

Proctor v. State 298 Ga.App. 388 (2009)

Wing v. State 327 Ga.App. 361 (2014)

Temples v. State 280 Ga.App. 874 (2006)

Patton v. State 287 Ga.App. 18 (2007)

Wimpey v. State 297 Ga.App. 182 (2009)

Walden v. State 291 Ga. 260 (2012)

Rushing v. State 305 Ga.App. 629 (2010)

16. Please submit a representative sample of your writing (e.g. brief, order, opinion, opinion letter).

See attached.

17. Describe your practice other than trial practice during the past five years in some detail as it may relate to office and business practice, as well as any other phases of your practice.

As Solicitor-General I managed a staff of 28 total employees including 11 Assistant Solicitors-General, 5 post-sworn investigators, and 4 victim advocates. Additionally, my office managed 4 State Court courtrooms and 1 Magistrate (jail) Court courtroom on a daily basis. I oversaw approximately a 2.25 million dollar budget with additional duties as a direct and governing board member of the Flint Circuit Drug Task Force which was our undercover unit here in Henry County.

As Superior Court Judge I preside over all matters domestic related (3 days per month and additional "special-set" days), felonies (3 criminal days per month and one full week of criminal trials), and general civil (1 civil day per month and one full week of civil trials).

18. Have you ever been engaged in any occupation, business or profession other than the practice of law? If so, please give the details including dates.

Yes. I was an adjunct faculty member at the Emory University School of Law where I taught a class during spring semester (contract basis): Sex Crimes and Domestic Violence. I also taught Criminal Law courses as an adjunct faculty member at Gordon State College every fall and spring (contract basis). I also taught Criminal Justice courses at Mercer University from year to year.

19. Are you presently acting in a fiduciary capacity? If so, state details.

No.

20. Please describe your opinion of the role a law clerk or a staff attorney should serve with respect to assisting a judge.

As a Superior Court Judge, I expect my law clerk to perform functions of research, writing, and to act as a sounding board as I talk through issues. However, it is important that case decisions are mine, not anyone else's. I assign writing and research tasks to her, taking her input as I formulate my opinion, but reserving the final decision to myself.

21. Please describe how a judge of the court for which you are applying might improve the efficiency and effectiveness of the legal system in administering justice.

Recently the Court of Appeals has undertaken the task of reworking the mechanics of their Court. This has radically changed their processes and for the better (in my opinion). I would love to assist them with their efforts as they move forward with streamlining the Court.

22. Have you ever held public office, other than judicial office, or have you ever been a candidate for such an office? If so, give the details, including the offices involved, whether elected or appointed, and the length of your service.

Yes. I ran unsuccessfully for the State House of Representatives in 2008 against the incumbent 3-term State Representative for House District 109. I lost by less than 1% of the total votes cast (but who's counting?).

In 2012 I was appointed by Governor Nathan Deal as Solicitor-General of Henry County.

In 2014 I was re-elected, without opposition, to a full four year term.

In 2018 I was appointed by Governor Nathan Deal as Superior Court Judge of the Flint Judicial Circuit.

23. Have you ever been sued by a client? If so, please give particulars.

No

24. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

While an Assistant District Attorney, I was named in a civil petition (in or around 2005) along with the Chief Assistant District Attorney, and the District Attorney. I was never deposed; I was never asked to write a statement; nor was I summoned to court on the matter. My understanding at the time was that the petition had been dismissed and I have no information since that time which would make me believe otherwise.

While an Assistant District Attorney, I was named in a civil petition (in or around 2007) filed by a police officer resulting in an ex-parte protective order. Prior to having a hearing, and without filing an answer, the petition was withdrawn and dismissed by petitioner's motion.

While Solicitor-General of Henry County, I was named in a civil petition (in or around 2015) filed by a former defendant who successfully completed pre-trial intervention. His petition alleged police brutality against the arresting officer/detective, police brutality

against my Chief Investigator, and a failure to supervise both law enforcement officers on my part. A motion to dismiss was filed and granted by the Federal Court.

I have not otherwise been a party to any litigation, a party in interest, material witness, co-conspirator, co-respondent, or subject of or witness in any grand jury investigation.

25. Have you published any legal books or articles? If so, please list them, giving the citations and dates.

None

26. List any honors, prizes, awards, or other forms or recognition which you have received.

Executive Officer of the Year: Rotary Club (Henry County)
Leadership Award: Commissioner Bruce Holmes Youth Foundation

27. List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance.

State Bar of Georgia
Henry County Bar Association
Solicitors-General Association of Georgia (Legislative Committee)
Prosecuting Attorney's Council (Board Member: one of nine) (Vice-Chair)

28. Have you read and carefully studied the Code of Judicial Conduct?

Yes

29. Will you adhere to the letter and the spirit of such Code should you be appointed as judge?

Yes

30. You are requested to execute and transmit to the Chairman of the Commission two copies of the form of Authorization for Access to Information Concerning Disciplinary Matters included with this questionnaire.

Provided by attachment.

31. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprise, please give details, including the name of the

enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If it is not your intention to resign such positions and give up any other participation in the management of any of the foregoing enterprises, please so indicate, giving reasons. List all companies in which you, your spouse or minor children hold stock.

Member/Partner of Buggy Properties. We own 4 rental homes which we lease.

32. List the non-professional organizations to which you belong and civic and service activities in which you have participated in the past two years.

**Rotary Club of Henry County (Past Executive Officer)
Haven House Domestic Violence Shelter (Past Board of Directors)
Speedway Children's Charities (Past Chairman of the Board of Directors)
Commissioner Bruce Holmes Youth Foundation**

33. Have you ever been arrested, charged, or held by federal, state or other Law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$50.00 or less was imposed.

I received a speeding citation in Walton County, Georgia. The offense date was 2/16/2003 with a disposition date of 3/28/2003. I pled Nolo Contendere and paid a fine. It is court number 406181 in Walton County, Georgia. I do not otherwise recall the details nor do I recall the monetary value of the fine imposed. The fine may have been less than \$50, but I am listing it here regardless. I have not otherwise been arrested, charged, or held by any authorities for violation of any law, regulation, or ordinance.

34. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

No complaint, for any reason, has ever been filed against me.

35. The Governor's Ethics Order prohibits the appointment by the Governor of any person to fill a judicial vacancy:

(a) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee at any time after the vacancy occurs; or

(b) who has made a contribution to, or expenditure on behalf of, the Governor or the Governor's campaign committee within the 30 days preceding the vacancy, unless such person requests and is granted a refund of such contributions or reimbursement of such

expenditure.

Please reference questions 36 and 37.

36. Have you made a contribution or expenditure as described in 35(a) above?

No

37. (a) Have you made a contribution or expenditure as described in 35(b) above?

I have not made a contribution to the Governor or Governor's campaign committee within 30 days preceding the vacancy of this judgeship.

(b) If you answered yes to 37(a), have you been granted a refund or reimbursement? Not Applicable.



Applicant's Signature

Date: 10/24/2018

IN THE COURT OF APPEALS

STATE OF GEORGIA

THE STATE OF GEORGIA,

Appellee

v.

APPEAL NO.: A09A1501

TYRONE EUGENE THOMAS,

Appellant

BRIEF OF APPELLEE

PART ONE
STATEMENT OF FACTS

Appellant's statement of facts will be supplemented as follows:

On January 16, 2003 Appellant was treated at Henry County Medical Center Emergency Room for gunshot wounds. (T: Pages 121-122)¹. Lieutenant Ferguson and another police officer spoke to Appellant about his wounds. (T: Page 122). Appellant told the officers that when he was walking to his apartment, two African-American men threatened him with a gun and ultimately shot him. (T: Pages 123-124).

¹ T indicates the trial transcript from the Jury Trial held May 9 through May 12, 2005 in the Superior Court of Henry County before the Honorable Arch W. McGarity.

Appellant fled to his apartment where he realized he was shot in the legs. (T: Pages 123-124).

Appellant signed a consent-to-form authorizing officers to search his apartment. However, it was discovered that Appellant signed a form containing the wrong apartment number. (T: Page 124). Appellant signed a second consent form authorizing a search of the correct apartment. (T: Pages 124-125).

Upon enforcing Appellant's consent to search, Lieutenant Ferguson found blood throughout Appellant's apartment, marijuana on Appellant's couch in plain view, a bag containing several small blue and purple pills, a pink colored pipe possibly used to smoke marijuana, and two plastic pipes found to contain marijuana residue. (T: 126-127). After Lieutenant Ferguson made aforementioned discoveries, Appellant rescinded his consent to search the apartment. (T: Pages 126-127).

Because the authorized search yielded illegal drugs in plain view, Sergeant Nebel applied for a search warrant to search Appellant's apartment, vehicle, and detached garage. (T: Pages 127-128; 197-198).

With warrant authorization, police officers found in Appellant's apartment a pill press machine, various types of powders, plastic baggies with white pills in them, a

Coleman cooler with empty pill capsules, capsule-filing machines, a significant amount of marijuana, a plastic container labeled "Dextromethorphan Hydrobromide" which contained white power used to make the drug Ecstasy, six counterfeit one-hundred-dollar bills, a glass pipe, and one pound of hashish. (T: Pages 197-198, 200, 202-203, 209). In the detached garage, officers found two additional pill presses, a safe that contained 41.2 grams of methamphetamine, two separate bags of cocaine, marijuana and MDMA (Ecstasy) powder. (T: Pages 203-206).

Appellant was indicted on April 29, 2003 by the Grand Jury of Henry County for the offenses of Trafficking in Methamphetamine, Trafficking in Cocaine, Manufacturing 3, 4-Methylenedioxyamphetamine, VGCSA with Intent to Distribute 3,4-Methylenedioxyamphetamine, Forgery in the Second Degree, and Forgery in the Second Degree. (R: Pages 4-12).² A jury trial was held from May 9 through May 12, 2005. The jury found Appellant guilty of all the charges. (T: Page 451). Appellant filed a timely Motion for New Trial, which was ultimately decided and overruled on May 20, 2008. (R: Page 381).

Appellant appeals.

² R indicates the Record of the Case.

PART TWO³
ENUMERATION OF ERROR I:

The Trial Court did not err by not allowing the Appellant to proceed pro se.

Both the federal and state constitutions guarantee a criminal defendant the right to self-representation. Furetta v. California, 422 U.S. 806 (1975); 1983 Ga. Const., Art. I, Sec. I, Par. XIII. An unequivocal assertion of the right to represent oneself made prior to trial should be followed by a hearing to ensure that the defendant knowingly and intelligently waives the right to counsel and understands the disadvantages of self-representation. However, a defendant "cannot frivolously change his mind in midstream" by asserting his right to self-representation in the middle of his trial. Thaxton v. State, 260 Ga. 141 (1990).

Even assuming arguendo, Appellant *did* unequivocally assert his right to self-representation by asking the court, "So if I release him as counsel I still can't close?" (T: page 314), the denial of this request to represent himself, a request made after the testimony of numerous witnesses, cannot serve as the basis for reversal since a defendant cannot frivolously change his mind in

³ Research and information provided in Part Two is partially derived from the "State's Response to Defendant's Motion for New Trial" filed in the Office of Henry County Superior Court on April 22, 2008.

midstream by asserting his right to self-representation in the middle of trial. Id.

In the case at hand, the Appellant never unequivocally asserted his right to self-representation prior to trial. Trial counsel testified that Appellant never expressed to him his desire to proceed pro se. (MNT: Page 33, Lines 10-12)⁴. Moreover, at Appellant's hearing for a Motion for New Trial, when counsel asked Appellant if he wanted the Trial Court to appoint counsel to him, Appellant answered, "Only a lawyer of my choosing, which would have been from somewhere in Atlanta, to be honest with you." (MNT: Page 113, Lines 5-9). Appellant went on to state that he "pretty much" wanted to represent himself. (MNT: Page 113, Lines 11-12). The Appellate Court found that there is no reversible error in requiring a defendant to proceed with counsel when the defendant's statements amount to nothing more than expressions of dissatisfaction with current counsel. Crutchfield v. State, 269 Ga. App. 69 (2004).

Furthermore, under Lynott v. State, the Appellate Court found, in denying defendant' enumeration of error, that a defendant's request for new counsel or a defendant's desire to act as co-counsel does not equal an unequivocal

⁴ MNT indicates the Motion for New Trial Transcript taken on June 26, 2007 before Chief Judge Arch W. McGarity, in the Henry County Superior Court.

desire to represent oneself and is not constitutionally protected. Lynott v. State, 198 Ga. App. 688 (1991). In the case at bar, Appellant admits to giving his trial counsel a copy of Appellant's opening statement so that the attorney could give him legal advice and critique. (MNT: Page 127). Evidently, Appellant was desirous to work with trial counsel in preparation of his case.

Therefore, Appellant's enumeration of error Number 1 is without merit.

ENUMERATION OF ERROR II:

Appellant's Constitutional right to be present during critical stages in trial was not violated.

Defendants have the right to be present during all critical stages of the proceedings against them and shall not be deprived of the right to prosecute or defend their own cause in any of the courts of Georgia. Hanifa v. State, 269 Ga. 797 (citing the Georgia Constitution, Art. I, Sec. I, Para XII). The rule as to whether a defendant must be present is well established in that the defendant on trial must be present when the court takes any action "materially" affecting the defendant's case. Andrews v. State, 196 Ga. 84 (1943) (*emphasis added*).

Subsection I:
Appellant's Motion to Continue was not a critical or
material stage of the trial.

Appellant contends that his Constitutional rights were violated when the State and Appellant's counsel argued a Motion to Continue Appellant's trial outside Appellant's presence, which the Trial Court denied (T: page 24-26).

The United States Supreme Court has held that a defendant has the right to be present when the proceeding is reasonably substantial to the fullness of the opportunity to defend against the charge. Riley v. State, 180 Ga. App. 409 (1986) (citing Snyder v. Massachusetts, 291 U.S. 97 (1934)). The presence of a defendant is a condition of due process only to the extent that a fair and just hearing would be thwarted by his absence. Id. Thus, the general rule is that the presence of the defendant is not essential at preliminary pretrial motions which involve only issues of law. Id. Moreover, the Appellate Court has found that a court's refusal to continue an appellant's trial was not such a material effect to the appellant's case as to require the presence of appellant when the decision was made. Keen v. State, 164 Ga. App. 81 (1982). In the case at bar, Appellant's Motion to Continue was a preliminary pretrial motion that was not a reasonably

substantial proceeding to which Appellant needed to present.

Furthermore, assuming Appellant's arguendo that he did waive his right to be present at the Motion to Continue Hearing, the Appellate Court has found that in certain instances, proceeding in the defendant's absence without a waiver may constitute a "harmless error." Cayruth v. State, 273 Ga. App. 166 (2005).

Subsection II:

The Trial Court's communication with Petit Juror Tatum did not constitute harmful error to the extent the Appellant's Constitutional rights were violated.

During the Appellant's trial, Petit Juror Tatum had a medical emergency involving his father. The Trial Court informed the parties that it was going to meet with Juror Tatum in chambers about the emergency and would report back. Thereafter, the Trial Court returned and informed the parties of the contents of the conversation. (T: 229-232). Later, the Trial Court again met with Juror Tatum in chambers to discuss the medical emergency. After the meeting the Trial Court returned to the bench and advised the parties of the context of the conversation with Juror Tatum. (T: 374-376).

Because the Appellant was aware of the communication between the Trial Court and the juror prior to the verdict and failed to voice an objection, he has waived review of the communication by the Appellate Court. Thacker v. State, 226 Ga. 170 (1970); see also Battle v. State, 234 Ga. 637 (1975) (where the reviewing court found that the defendant was not affected by the communication); Hurston v. State, 206 Ga. App. 570 (1992) (where the appellate court found that the contents of the communication did not materially affect the case); Recoba v. State, 179 Ga. App. 31 (1986) (where the communication was of a presumptively harmless character).

Therefore, Appellant's enumeration of error Number 2 is without merit.

ENUMERATION OF ERROR III:

Trial Counsel was not ineffective for failing to object to evidence that was introduced at trial that had been challenged on a Motion to Suppress.

A defendant need not object to evidence, which was the subject of a motion to suppress that has already been overruled, when that evidence is admitted at the trial under the same fact. Kilgore v. State, 247 Ga. 70 (1981). Moreover, an objection by trial counsel would have been fruitless. Therefore, the failure to object provided no

basis for a finding of ineffective assistance of counsel. Judkins v. State, 282 Ga. 580 (2007).

Additionally, The Trial Court did not err in denying Appellant's Motion to Suppress Evidence seized from the Appellant's garage. Appellant's garage was contained within the cartilage of the Appellant's apartment. Testimony was given that the garage was located approximately twenty to twenty-five feet from the Appellant's apartment. (MTS: page 151)⁵

Furthermore, Appellant implies that the Magistrate Court was erroneous in granting the warrant to search Appellant's apartment and detached garage. A search warrant will only be issued upon facts sufficient to show probable cause that a crime is being committed or has been committed. State v. Palmer, 285 Ga. 75 (2009). The magistrate's task in determining if probable cause exists is based upon making a practical, common-sense decision, whether there is a fair probability that the contraband or evidence of a crime will be found in a particular place. Id. The trial court may examine the magistrate's decision to issue a warrant, guided by the Fourth Amendment, but must give substantial deference to the magistrate's

⁵ MTS indicates the Motion to Suppress hearing held on December 16, 2003 before the Honorable Arch W. McGarity.

decision. Id. In denying Appellant's Motion to Suppress, the Trial Court found sufficient evidence existed to justify the issuance of the warrant, including Appellant's detached garage.

Finally, Appellant argues that the search warrant was not specific enough as to constitute a search of the detached garage because the warrant did not specify where the garage was specifically located. However, warrants must be tested and interpreted by magistrates and courts in a common sense and realistic fashion, and not under the technical requirements of elaborate specificity once required by common law. Driscoll v. State, 129 Ga. App. 702 (1973). Thus, the warrant's specific consent to search Appellant's garage was sufficient to justify the search.

Therefore, Defendant's enumeration of error Number 3 is without merit.

PART THREE
CONCLUSION

For the reasons set forth in this brief together with the findings of law and fact by the Trial Court, the State of Georgia, Appellee, through its authorized representatives, respectfully urges this Honorable Court to affirm the judgment of the Trial Court.

Respectfully submitted this __ day of _____, 2009.

Tommy K. Floyd
District Attorney
Flint Judicial Circuit
State Bar Number 266475

Trea Pipkin
Assistant District Attorney
Flint Judicial Circuit
State Bar Number 142570

STATE OF GEORGIA

COUNTY OF Henry

The undersigned, being a nominee for appointment by the Governor of the State of Georgia, to a position of Judge in one of the courts in this State and being fully cognizant of the responsibility to the public, the Bench and the Bar of this State, lodged with the Judicial Nominating Commission of the State of Georgia in the selection of persons to be submitted to the Governor for any such appointment do hereby:

1. Authorize the State Bar of Georgia and its Disciplinary Board (and the disciplinary authority of any other state in which the undersigned may have practiced law) and/or the Judicial Qualifications Commission of the State of Georgia to answer any inquiries, questions or interrogatories concerning the undersigned which may be submitted to them by the Judicial Nominating Commission of the State of Georgia or its authorized representative, and to give full and complete information regarding the undersigned in any of their files and to permit said Commission or its authorized representative to inspect and make copies of any documents, records and other information concerning the undersigned and any complaint which might have been made against the undersigned at any time whatsoever:
2. Does hereby release and exonerate the Governor of the State of Georgia, the State Bar of Georgia, the Judicial Nominating Commission of the State of Georgia, the Judicial Qualifications Commission of the State of Georgia, and every other person, firm, officer, corporation, association, organization or institution which might be involved in complying with, or receiving information under, the authorization and request made herein from any and all liability of every nature and kind growing out of or in any wise pertaining to compliance with this authorization and request.

IN WITNESS WHEREOF the undersigned has set his/her hand and seal this 22 day of October, 2019

Please fill in: Date of birth 

State Bar Number 

Trea Pipkin
Print Name Trea Pipkin

Subscribed before me this 23rd day of October, 2019



Notary Public

expires May 21, 2022

[Handwritten signature]

[Faint, illegible text]

22

[Handwritten signature]
1/22/20
3/1/20

[Handwritten signature]
1/22/20

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STATE OF GEORGIA

COUNTY OF Hawkeye

The undersigned, being a nominee for appointment by the Governor of the State of Georgia, to a position of Judge in one of the courts in this State and being fully cognizant of the responsibility to the public, the Bench and the Bar of this State, lodged with the Judicial Nominating Commission of the State of Georgia in the selection of persons to be submitted to the Governor for any such appointment do hereby:

1. Authorize the State Bar of Georgia and its Disciplinary Board (and the disciplinary authority of any other state in which the undersigned may have practiced law) and/or the Judicial Qualifications Commission of the State of Georgia to answer any inquiries, questions or interrogatories concerning the undersigned which may be submitted to them by the Judicial Nominating Commission of the State of Georgia or its authorized representative, and to give full and complete information regarding the undersigned in any of their files and to permit said Commission or its authorized representative to inspect and make copies of any documents, records and other information concerning the undersigned and any complaint which might have been made against the undersigned at any time whatsoever:
2. Does hereby release and exonerate the Governor of the State of Georgia, the State Bar of Georgia, the Judicial Nominating Commission of the State of Georgia, the Judicial Qualifications Commission of the State of Georgia, and every other person, firm, officer, corporation, association, organization or institution which might be involved in complying with, or receiving information under, the authorization and request made herein from any and all liability of every nature and kind growing out of or in any wise pertaining to compliance with this authorization and request.

IN WITNESS WHEREOF the undersigned has set his/her hand and seal this 22 day of October, 2019.

Please fill in: Date of birth _____

State Bar Number _____

Trea Pipkin
Print Name Trea Pipkin

Subscribed before me this 22nd day of October, 2019

[Signature]
Notary Public
expires May 21, 2022

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Trea Pipkin
Superior Court Judge