



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

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**Tuesday, March 3, 2015**

### 10:00 A.M. Session

#### **ELBERT COUNTY ET AL. V. SWEET CITY LANDFILL, LLC, ET AL. (S15A0489)**

**Elbert County** is appealing a lower court's decision that allows a proposal to operate a landfill to move forward. The County argues the trial court was wrong to rule the County's solid waste management violates the Constitution, and to deny its motion to dismiss the lawsuit because the landfill company failed to file it in time.

**FACTS:** In this somewhat complex case, Sweet City Landfill, LLC, wants to operate a 270-acre landfill on one of three sites in Elbert County. Sweet City sought a "local compliance letter" from Elbert County, which would state that the solid waste landfill satisfied local zoning laws and the local solid waste management plan. Under the Georgia Comprehensive Solid Waste Management Act, the local compliance letter is a prerequisite for then applying to the state Environmental Protection Division. In November 2009, Sweet City filed with the County a document called "Application and Agreed Minimum Operating Conditions," also known as a "Host Agreement," which included a request for a Special Use Permit. Subsequently, Sweet City sued after the County agreed to proceed with a waste disposal facility operated by Plant Granite, LLC. According to Sweet City, the County exempted Plant Granite from the County's solid waste ordinance and determined it did not require a Special Use Permit from Plant Granite. In

October 2011, Sweet City and the County entered into an agreement to put on hold their legal disputes while they sought common ground on Sweet City's Special Use Permit application.

At a meeting July 9, 2012, the Elbert County Board of Commissioners voted 5-to-0, "not to enter into a 'Host Agreement with Sweet City Landfill, LLC'" and to terminate the agreement to put on hold the legal disputes. Less than three weeks later, the County adopted a zoning ordinance which would essentially preclude Sweet City's planned landfill. Sweet City apparently did not try to appeal the July 9, 2012 vote in superior court, nor did it seek further relief from the County. Rather, in March 2013, it again sued the County, challenging its solid waste ordinance as unconstitutional for violating the Commerce Clause and the Equal Protection Clause. Sweet City also sought a writ of "mandamus" to force the County to allow Sweet City to proceed with the landfill. The County then filed a motion to dismiss the lawsuit, arguing the trial court lacked authority because Sweet City had failed to appeal the decision to the superior court within 30 days of the Board of Commissioners' July 2012 vote, and because the landfill company went straight to court without first exhausting its administrative remedies, such as appealing to the County. Sweet City then filed a motion for "summary judgment," which a court grants upon determining a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.

On Sept. 11, 2014, the Elbert County Superior Court ruled in Sweet City's favor and issued an order finding that the County's solid waste ordinance violated the Commerce Clause of the U.S. Constitution, and that the July 9, 2012 action by the Board of Commissioners deprived Sweet City of the right to Equal Protection under both the U.S. and Georgia constitutions. The trial court determined that the July 9, 2012 Board action was a "siting decision" that required notice to the public under Georgia law, and that the public had not been notified. As a result, the trial court found the July 9, 2012 vote was void from the beginning and was "thus unappealable." The superior court implied that the Board's action was not final, concluding that it "only declined to enter into a host agreement with Sweet City and took no action with respect to Sweet City's Special Use Permit application." Therefore, Sweet City had not exhausted all administrative remedies, as there were matters to be taken up beyond the host agreement. However, the trial court denied the County's motion to dismiss the case, ruling that Sweet City did not have to exhaust its administrative remedies because doing so would be futile. The County and county officials now appeal to the state Supreme Court.

**ARGUMENTS:** The County's attorneys argue the trial court made a number of errors, beginning with its denial of the County's motion to dismiss the case. "The trial court lacked subject matter jurisdiction because Appellees [i.e. Sweet City] failed to appeal the Board's adverse decision within the 30-day period" required by state law. This decision was "appealable," the attorneys argue and "a superior court lacks jurisdiction when such an appeal is filed beyond the time allowed by law." The trial court erred in concluding that the decision was "unappealable." At its July 9, 2012 meeting, the Board of Commissioners denied the Host Agreement, which was tantamount to denying Sweet City's request for a special use permit and a local compliance letter. Sweet City then waited eight months before filing their complaint challenging the ordinance. Furthermore, the trial court should have dismissed the lawsuit because Sweet City failed to exhaust its administrative remedies, "as doing so would not have been futile," the attorneys argue. "Because they failed to do so, the trial court lacked subject matter jurisdiction." A "futile" act only occurs when the only administrative remedy involves seeking a

review “that ultimately would result in a decision on the same issue by the same body.” “The fact that [an applicant] was pessimistic about its prospects for obtaining a special use permit, even if that pessimism was justified, does not prove that exhaustion of remedies would have been ‘futile’ as this Court has defined that term,” the attorneys argue. Among other errors, the trial court erred in finding that the County’s solid waste management ordinance violates the Commerce Clause and that the Board’s action violates the Equal Protection Clause. The Commerce Clause “forbids a state or municipality from impeding the flow of goods and services across state borders, or from favoring in-state economic interests at the expense of out-of-state economic interests.” Contrary to the trial court’s conclusion, the ordinance does not create an absolute ban on landfills. “The solid waste management ordinance has no conditions which favor or even contemplate the consideration of in-state versus out-of-state interests,” the attorneys argue. The trial court was also wrong in determining that the Equal Protection Clause was violated by the Board’s “alleged preferential treatment of another 2009 landfill applicant, Plant Granite, LLC. The evidence shows that Sweet City’s proposal was not “similarly situated,” “identical in all relevant respects,” or “essentially the same size,” and would not have “an equivalent impact on the community” as Plant Granite’s proposal. Even if certain provisions of the ordinance could be considered unconstitutional, the trial court erred in striking entire sections of the ordinance, the attorneys argue.

Sweet City’s attorneys argue the trial court did have the authority to deny the County’s motion to dismiss the lawsuit. While the County’s “revisionary history of its decision on July 9, 2012,” is that it denied Sweet City’s application for a special use permit, the trial court correctly “declined to accept Elbert County’s contentions that a refusal to ‘enter into a Host Agreement’ is tantamount to a denial of the special use permit.” The County’s decision not to enter into a contract or “Host Agreement” was a legislative decision, the attorneys argue, and before a board may exercise its legislative authority, state law requires that it hold a public hearing. “Elbert County’s failure to properly [notify] and hold a public hearing renders the siting decision [unauthorized],” the attorneys argue. The trial court also correctly determined that exhausting its administrative remedies would have been futile. “Elbert County adopted zoning to prevent Sweet City from developing a landfill on its property.” The state Supreme Court “should agree that exhaustion of administrative remedies under these facts would have been futile and the writ of mandamus is required if justice is to be done.” The trial court correctly found that the ordinance violates the Commerce Clause as it “discriminates against interstate commerce by placing the entire burden of waste disposal on the rest of the state and country.” “If not struck, localities will adopt similar bans and future landfills will concentrate in those Georgia communities where bans have not been enacted,” the attorneys argue. The trial court also correctly ruled that Sweet City’s right to equal protection was violated by the County’s refusal to exempt it from the solid waste ordinance while exempting Plant Granite’s “similarly situated proposed facility.” “Elbert County should have exempted Sweet City from the special use permitting requirement in the solid waste ordinance and should have issued the local compliance letter rather than discriminate against Sweet City,” the attorneys contend.

**Attorneys for Appellants (County):** Bill Daughtry, Brandon Bowen, Robert Walker, Normal Fletcher, A. Franklin Beacham III, Lee Carter

**Attorneys for Appellees (Sweet City):** Andrew Welch, III, Lajuana Ransaw

## **MOHAMUD V. THE STATE (S15A0586)**

In this **Gwinnett County** case, a young man is appealing his murder conviction and life prison sentence, arguing that he was defending himself when he shot and killed the victim.

**FACTS:** On July 21, 2010, Fuad Abdulaziz Mohamud, his brother and a friend, Airis Evans-Ingram, road in a tan Grand Am automobile driven by Brandi Arden to a Chevron gas station in Lawrenceville. Arden later testified that Mohamud had told her he wanted to meet someone named “Curt” at the convenience store. She said that after a brief conversation between Mohamud and his brother in their native tongue of Somali, Mohamud and Evans-Ingram got out of her car and approached a blue Crown Victoria that had pulled into the convenience store parking lot shortly after they had arrived. Inside that car was DeAndre Perkins, who was seated on the passenger’s side. Arden said she watched Mohamud approach the car, back up a bit, and then she heard a single gunshot and watched as the Crown Victoria quickly backed up. As Arden began to drive away, Mohamud and Evans-Ingram ran after her car and jumped in. She testified Mohamud frantically said, “Oh, my god, he had a gun. He had a gun. . .I had to shoot.” According to state prosecutors, a Chevron surveillance video showed Mohamud stepping toward the Crown Victoria as it was backing out. Mohamud then lurched at the car and fired. Perkins was struck in the chest. Arden said that after stating Perkins had pulled a gun on him, Mohamud said he had done what he had to do. Arden said Mohamud told her not to say a word about the shooting, and if police asked her about it, she should tell police she had not been present at the scene. Following the shooting, the driver of the Crown Victoria drove up the street to Herrington Woods Apartments, where the driver called police. Perkins was transported to the local hospital where he later died from a single gunshot wound to his chest that struck his heart and aorta. The State said no weapon was found on Perkins. Based on the surveillance video and interviews with witnesses, investigators tracked down the car owned by Arden and interviewed her about the crime. Soon after, Mohamud was arrested.

In October 2013, a jury found Mohamud guilty of murder, aggravated assault and possession of a firearm during the commission of a felony. He was sentenced to life plus 25 years in prison. Mohamud now appeals to the state Supreme Court

**ARGUMENTS:** Mohamud’s attorney argues that four errors were made, any one of which requires that his convictions and sentences be reversed. Among them, Mohamud’s trial attorney rendered deficient performance by failing to call material witnesses who could have testified in support of Mohamud’s sole defense at trial: self-defense. His entire case was that he had fired his gun at Perkins because Perkins committed a forcible felony by first pointing a gun at him. Evans-Ingram, who was present at the scene, was prepared and willing to testify at Mohamud’s trial, but the trial attorney never called him. Prior to trial, the attorney interviewed seven people, but failed to call any of these potential witnesses. “This is unimaginable,” Mohamud’s attorney for his appeal argues. “Some of these witnesses possess explosive, clear, potentially persuasive, exculpatory evidence that would have supported Appellant’s self-defense claim,” the attorney argues in briefs. “This evidence came in two separate but intertwined packages, to wit: (i) evidence that the deceased’s general reputation in the community was one for violence, and (ii) that the deceased pulled and pointed a gun at [Mohamud] immediately prior to [Mohamud’s] pulling and firing his own gun at the deceased.” In a prior incident, Perkins had shot Mohamud twice in the leg and beaten his head with a pistol, requiring Mohamud’s hospitalization. Mohamud’s attorney calls it “inconceivable,” “befuddling, shocking and tragic to

know that an eyewitness who was captured on the surveillance recording watched the entire fatal episode but was not called by Appellant’s trial counsel to present purely exculpatory evidence at trial.” The trial attorney later said he had no strategic reason not to call any of the witnesses. “The failure to call witnesses who would testify that the deceased’s reputation is one for extreme violence and a witness who watched the deceased point his gun at Appellant before Appellant ever reached for his own gun and fired same is deficient performance, per se,” the attorney argues. The trial attorney also rendered “ineffective assistance of counsel” by failing to ask the trial judge to instruct the jury that pointing a pistol at another can constitute the “forcible felony” that led to Mohamud having to defend himself. “The trial court correctly charged that Appellant could be justified in using force that caused death to the deceased only if Appellant believed that such force was necessary to prevent the death or great bodily harm or injury to himself or to prevent the commission of a forcible felony,” Mohamud’s attorney argues. “However, the trial court never instructed the petit jury on what constitutes a forcible felony.” The trial court also erred by sentencing Mohamud to 20 extra years in prison for aggravated assault. “When the same injury is inflicted on the same supposed victim, and the criminally accused is convicted of both aggravated assault and malice murder, the aggravated assault conviction must merge for purposes of sentencing into the malice murder conviction,” Mohamud’s attorney argues.

The State agrees that the aggravated assault conviction must merge with the malice murder conviction for the purpose of sentencing, and it supports sending the case back to the trial court, but for resentencing only. Mohamud’s trial attorney provided effective assistance, the State contends, by both requesting the appropriate jury instructions and presenting evidence of self-defense. The instruction the trial judge gave to the jury on self-defense was sufficient, and Mohamud’s attorney made no objection, the State argues. Mohamud argued his trial attorney failed to call witnesses who would have shown that Perkins had a violent disposition such that Mohamud was justifiably in fear when Perkins pulled his gun. But testimony of Perkins’ violent disposition was in fact presented at trial, the State argues, through the testimony of Brandi Arden. She testified she was aware of the previous incident when Perkins shot and beat Mohamud. And she described Mohamud as “frantic” right after the shooting, because Perkins had a gun and Mohamud said he had no choice but to shoot. Further testimony from any other witnesses would have been cumulative and unnecessary, the State contends. As to Evans-Ingram, while he did not testify at trial, his account of what happened – that he and Mohamud were walking toward the store first and then the Crown Victoria backed up toward them – directly contradicts the surveillance video shown at trial. The video shows Mohamud and Evans-Ingram waiting in their car several minutes before Perkins arrived. When his car pulled up to the convenience store, they got out and walked right to it. The video shows that when the two men got alongside the vehicle, it quickly pulled into reverse at which time, Mohamud is seen lunging forward to shoot the gun into the passenger side window. The State “would submit that the video surveillance tape indicated that [Mohamud] was in fact the aggressor.”

**Attorney for Appellant (Mohamud):** Brian Steel

**Attorneys for Appellee (State):** Daniel Porter, District Attorney, Jim Carmichael, Asst. D.A., Christopher Quinn, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Christian Fuller, Asst. A.G.

## **DAUGHTIE V. THE STATE (S15A0591)**

In this **Richmond County** case, a man is appealing his convictions and life prison sentence for murder and attempted armed robbery.

**FACTS:** According to the State's case, on Aug. 19, 2010, Ozzie Jones called 911 and said he had been shot. His friend, Dontrell Kyler, was dead. According to Jones, that night he and Kyler had gone to a couple of nightclubs and eventually wound up at a Waffle House restaurant. They may have unwittingly made themselves into targets by showing off their gold jewelry at the nightclubs and flinging dollar bills into the air. At some point, Jones realized he was being followed by a Chevrolet Trail-Blazer. When Jones made a turn to drop off Kyler at home, the Trail Blazer cut in front of Jones' car. A man, later identified as James Daughtie, jumped out of the Trail Blazer, cocked his gun, and said, "You know what it is," which Jones assumed meant a robbery was in progress. When Daughtie began firing his weapon at Jones and Kyler, Jones returned fire until his gun jammed or ran out of bullets. Bullets struck Jones in the hand, and killed Kyler. Jones decided to "play dead," and as he lay in the car, Daughtie rifled through his pockets and tried to steal his gold chain from his neck.

Later that morning, the Richmond County Sheriff's Office received another call, this time from Daughtie, reporting that he had been shot after being robbed at a Sprint gas station on Gordon Highway in Augusta. A deputy responded to the call at Daughtie's home, where he saw a Chevrolet Trail-Blazer that was similar to the one Ozzie Jones had earlier described. Daughtie had a bloody towel wrapped around his leg and told the deputy he had been the victim of a robbery and had been shot. While an ambulance took Daughtie to the Medical College of Georgia for treatment, sheriff's deputies conducted a search of his home. They found several bloody items of clothing hidden in the curbside trash receptacle outside. Inside, they found a blood-stained 9mm pistol hidden under the pillow of Daughtie's bed. A firearms test later showed it had fired the bullet recovered from Kyler's body during the autopsy. Several items were in the shower, including a cell phone, clothes, and a pair of Timberland boots. The items were soaking wet and had been washed with rubbing alcohol. A plaster cast that was later made of a footprint found at the murder scene matched the size and tread pattern of the wet Timberland boots found in the shower.

In May 2011, the jury found Daughtie guilty of murder, aggravated assault, attempted armed robbery, theft by receiving stolen property and gun charges. He was sentenced to life plus 55 years in prison. Daughtie now appeals to the state Supreme Court.

**ARGUMENTS:** Daughtie's attorney argues the trial court made six errors. Among them, the evidence was insufficient to sustain the convictions because the State failed to prove that Daughtie participated or was even present at the scene of the murder, or that he had tried to rob Jones. No eyewitnesses identified him at the scene, "nor was there any evidence that he fired a weapon at Ozzie Jones and Dontrell Kyler," Daughtie's attorney argues in briefs. While Jones said he shot back at the assailant, or possibly assailants, he could not describe either, nor could he describe who attempted to take his necklace and was shooting into the car. While he described being followed by a Trail Blazer, he could not describe the color, only that it was dark. While tests by the GBI later tied the gun found at Daughtie's home to the crime scene, according to witnesses there more than one perpetrator, "and the facts do not rule out the conclusion that another individual had fired the fatal shots at the crime scene and later brought the gun to

[Daughtie],” his attorney argues. There also were no witnesses who said Daughtie was actually shot in the leg at the crime scene, rather than in a separate incident as he described. “The nature of the case against [Daughtie] was predominately circumstantial and certainly did not rule out every reasonable conclusion save the guilt of the accused,” as state law requires, the attorney argues. The evidence was also insufficient to prove him guilty of theft by receiving the 9mm pistol the State alleged was used in the shooting. The only evidence against him was a man’s testimony that a female friend of his had stolen the gun out of his truck in North Carolina. Daughtie stated that he “found” the gun in North Carolina, but there was no evidence presented at trial that he knew the gun had been stolen. Daughtie also challenges the State’s ballistics testing of the gun and claims his trial attorney was ineffective for failing to object to the firearms expert’s opinions on several grounds. Had the attorney investigated the firearm examiner’s background, trial counsel could have argued that the examiner “did not do appropriate testing and the ballistics report could not be trusted at all.” The trial attorney was also ineffective for failing to challenge the expert testimony regarding the boot print, “as there was no evidence as to whether the boot print was made during the shooting or by bystanders later and no conclusive match as to any shoes worn by [Daughtie],” the attorney argues. “The expert’s opinion was that the shoe could or could not have made the impression found at the scene,” the attorney argues. The trial attorney should have objected to the introduction of such evidence on the ground it was irrelevant. “Further, the expert could not say there was a conclusive match or even when the shoe impression was made.”

The State argues the evidence was sufficient to convict Daughtie. The prosecution proved that Daughtie was the one who murdered Kyler and shot and robbed Jones. Jones testified that he was robbed at gunpoint and able to fire back at his assailant. The State proved that Daughtie was also shot that day, and forensic evidence tied Daughtie to the armed robbery, including blood-stained clothing. “Similar to Lady Macbeth’s famous act of compulsive hand-washing, the Appellant took a shower the night of the murder while wearing all of his clothes and even his Timberland boots,” the State argues in briefs. “Neither the shower nor the rubbing alcohol removed the blood from the Appellant’s shoe.” A blood-stained gun was found hidden under Daughtie’s pillow – the same gun used to fire the bullet recovered in the autopsy. Finally, his blood-stained boots had tread patterns that matched a footprint found at the murder scene, and were the same size. “‘If the shoe fits, wear it,’ the old saying goes, and in this case the jury found that the above pieces of evidence fit together into an inevitable picture of guilt.” There was also sufficient evidence to prove he was guilty of theft by receiving. “When the Appellant provided the unlikely story that he had found the gun used in the armed robbery and murder, the jury was entitled to find that he was hiding the true story of how he obtained the gun,” the State contends. Daughtie should not get a new trial just so he can attack the credibility of the State’s ballistics expert, nor was his trial counsel deficient in her investigation of the expert. His trial attorney also properly dealt with the footprint evidence. “The expert’s inability to positively identify Appellant’s boot as the source of the footprint at the scene of the crime was a fact in the Appellant’s favor,” the State argues. “The Appellant has failed to prove that his trial counsel’s handling of the footprint evidence was deficient as a matter of law or fact.”

**Attorney for Appellant (Daughtie):** Jana Jacobson

**Attorneys for Appellee (State):** Ashley Wright, District Attorney, Joshua Smith, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

## **2:00 P.M. Session**

### **BADEN, WARDEN V. OCHOA-HERNANDEZ (S15A0507)**

In this **Gwinnett County** case, the State is appealing a lower court's decision that threw out a Spanish-speaking man's conviction for drug charges on the ground that he lacked a qualified interpreter when he entered his guilty plea.

**FACTS:** Based on the guilty plea made by Maricio Ochoa-Hernandez, the Gwinnett County Superior Court found that the following occurred: In October 2009, a confidential informant working for the federal Drug Enforcement Administration (DEA) met with Ochoa, who said he could supply up to 15 kilograms of cocaine weekly. The next day, the DEA set up surveillance in Macy's parking lot at the Gwinnett Place Mall where Ochoa was seen getting into the informant's white Mercedes. The informant testified that Ochoa instructed him to drive to the Carrington Court apartment complex in Duluth, GA where they met up with another Hispanic man who showed the informant a kilogram of cocaine. The State obtained a wiretap order and intercepted numerous drug-related conversations on Ochoa's phone. In November 2009, phone conversations suggested a drug transaction was to transpire the next day. The DEA set up surveillance outside Ochoa's home in Lawrenceville, and the next day watched him leave his home and get into a car driven by a man who took him to the Rutherford Glen apartment complex in Doraville, GA. Special agents then observed another man come out of the apartment carrying a white Abercrombie and Fitch duffel bag which he placed in the back of his SUV before driving away. At the request of the DEA, DeKalb County police then stopped Alvarez's vehicle. Meanwhile, Ochoa and the other man fled.

In February 2010, Ochoa was indicted in Gwinnett County for conspiracy to traffic in cocaine. One year later, in February 2011, he entered a guilty plea and was given a split sentence of 30 years, with the first 15 to be served in prison and the remaining 15 on probation. In March 2011, he filed a "motion for withdrawal of a guilty plea," claiming several things, including that he did not receive a copy of the plea agreement and may have misunderstood the terms due to the interpreter's failure. The State filed a motion to dismiss his request as he filed it outside the term of court in which the plea had been entered. The trial court ruled in the State's favor and dismissed Ochoa's motion because he missed the deadline for filing.

In April 2013, Ochoa filed a petition for a writ of "habeas corpus" in Calhoun County superior court. (Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated. They generally file the action against the prison warden, which in this case was Joseph Baden.) In his habeas petition, Ochoa claimed he was "not guilty" of the charge but, due to his ignorance of the law, a lack of understanding of English and legal terms, "wrongful translations," fear of harsher treatment if he did not plead guilty, and a purported lack of understanding of the charges and defenses and consequences, he followed his attorney's advice and pleaded guilty. He said he was not "meaningfully advised of his constitutional rights by means of wrongful translation" and

did not validly waive his rights to effective assistance of counsel, a trial by jury, to confront witnesses, to exercise his privilege against self-incrimination, “meaningful explanation of the possible consequences” of the guilty plea, and “meaningful explanation” of the “immediate effect of the guilty plea.” In September 2014, the habeas court ruled in Baden’s favor and ordered that his conviction be vacated and his case sent back to the Gwinnett County court. The State now appeals to the Georgia Supreme Court.

**ARGUMENTS:** The Attorney General argues on behalf of the State that the habeas court made six errors, beginning with its failure to “make written findings of fact and conclusions of law upon which the judgment is based,” as the state habeas corpus statute requires. The Georgia Supreme Court has previously held that “if a habeas court enters an order denying relief, but fails to make the requisite findings of fact and conclusions of law, the order *must* be vacated and the case remanded with instruction to the habeas court to enter a new order that complies” with Georgia law, the State argues in briefs. The habeas court also erred in granting Ochoa relief based on his claim that his guilty plea was involuntary due to incorrect translation by the court appointed interpreter. Here, “the habeas court made no fact findings and no citations to existing law to justify a conclusion that Petitioner’s guilty plea was not knowingly, voluntarily, and intelligently made,” the State argues. Ochoa also did not receive ineffective assistance from his lawyer when he pleaded guilty, as he claims. Again, the State argues the habeas court made no findings or explanation to sustain that conclusion. Among other arguments, the State contends the habeas court erred in granting relief based on Ochoa’s claim that his right to due process was violated. He made that claim due to the trial court’s failure to provide for a recording and transcription of his conversations with his translator. “The State is only obligated under the federal Constitution to provide free trial transcripts to indigent appellants for use in state direct appeals,” the State contends, and the Georgia Supreme Court has consistently stated there is no constitutional right to transcripts for use in habeas challenges. The habeas court also erred in granting relief based on Ochoa’s claim that his constitutional right to equal protection was violated because he was “being treated differently because of his non-English national origin.” According to the State, neither the United States nor Georgia Supreme Court “has extended the equal protection clause to the guilty plea setting nor invalidated a guilty plea conviction on this basis.”

Ochoa’s attorneys argue that the record supports the habeas court’s order granting him relief. Ochoa never completed middle school and does not speak or read English. He testified he did not understand what the judge or lawyer was saying, and he had trouble following the interpreter who “spoke very fast.” However, if a remand is deemed necessary for the habeas judge to enter more specific findings of fact and conclusions of law, “this does not permit the lower court to reopen the case for other purposes,” the attorneys argue. “Instead, the scope of the lower court’s authority to act on remand is limited to the specific purpose of making the applicable findings and conclusions.” Ochoa did not enter into the plea bargain voluntarily because he did not understand the terms. He did not understand the nature of the charges against him, and he did not understand that the court was not obligated to accept a particular sentence recommendation. Ochoa thought he was agreeing to a 10-year sentence, not a 30-year sentence. And his right to due process was violated by the failure to provide a qualified interpreter. “Both this Court and the Georgia Court of Appeals have expressly acknowledged that failure to provide a competent interpreter to a non-English-speaking defendant in criminal proceedings implicates

due process rights,” Ochoa’s attorneys argue. The trial court made no inquiry into the interpreter’s qualifications and the record contains no information about her qualifications. Ochoa also received ineffective assistance of counsel by the attorney’s failure to ensure that the plea hearing complied with the requirements of the Uniform Superior Court Rules.

**Attorneys for Appellant (State):** Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

**Attorneys for Appellee (Ochoa):** Caleb Walker, Sarah Gerwig-Moore, Mattie Hardin, Marlene Otero, Dorothy Paul

### **MCLEAN V. THE STATE (S15A0308)**

In this **DeKalb County** case, a young man is appealing his murder conviction and life prison sentence for shooting into a crowd and hitting a young woman in the head, killing her.

**FACTS:** In April 2012, Peter McLean, who was 19 or 20 years old at the time, was dating Ashley Cochran, who was pregnant with his child. Ashley had previously dated Willie Geddis, Jr., with whom she had a 4-year-old son. Ashley and Willie’s relationship remained acrimonious. By April, 2012, however, Ashley was involved with McLean, and Willie also had a new girlfriend, LaTonya Jones. There was tension between Ashley’s old boyfriend and her new boyfriend, as well as between Ashley and LaTonya.

According to state prosecutors, on April 29, 2012, Ashley asked McLean to drive her to the Geddis family home so she could pick up her son. Willie’s mother was taking care of her little boy. Living in Mrs. Geddis’s home were nine of her children, as well grandchildren. Among those staying at the Geddis house were Willie and Willie and Ashley’s son. That day, McLean parked in the driveway and stood at the back of the car, while Ashley went inside to get her son. While McLean waited outside, Willie and LaTonya arrived at his mother’s house to do a load of laundry. According to testimony at trial, “Willie had brought his girlfriend over there and Ashley had brought her boyfriend over there and that kind of led to an argument.” Willie approached McLean and ordered McLean off his mother’s property. According to witnesses, McLean showed Willie a Ruger SR9 9mm pistol he had tucked in the waistband of his shorts. When Mrs. Geddis saw McLean’s gun, she insisted he leave. Angry, McLean got into his car and “hit the gas,” according to a witness. He lost control of the car, which ended in a ditch at the end of the driveway. The sound of the crash brought the rest of the Geddis family out of the house, and the scene became “chaotic,” according to a witness, with Willie’s siblings yelling at McLean for pulling a gun on their brother, with Willie and Ashley arguing, and with Ashley and LaTonya threatening to fight. When Geddis’s family began mocking McLean for driving his car into the ditch, McLean jumped out of his car and began firing. He claimed that Willie’s brothers tackled him while he was shooting, and the gun went off three more times during the struggle. During the gunfire, LaTonya was struck in the forehead, and she died on the scene. Willie’s sister was hit in her left shoulder. Willie and his brothers then restrained McLean until police arrived.

In August 2013, a DeKalb County jury found McLean guilty of felony murder, aggravated assault and possession of a firearm, and he was sentenced to life plus five years in prison. McLean now appeals to the Georgia Supreme Court.

**ARGUMENTS:** McLean’s attorney argues the trial court erred by commenting on the evidence when it instructed the jury that by raising the defense theory that McLean was justified in shooting to protect himself, McLean had admitted committing the act with which he was

charged. Specifically, the judge told jurors: “An affirmative defense is a defense that *admits doing the act that is charged in the bill of indictment*, but the affirmative defense seeks to justify, excuse, or mitigate the act.” “Now in this case, members of the panel, Mr. McLean has raised the affirmative defenses of justification for what is commonly known as self-defense and accident.” While the first sentence is a standard instruction given to jurors, it is the second sentence “that is the problem,” the attorney argues. “The trial court here informed the jury that to raise an affirmative defense you must admit the charged act, and that Mr. McLean had done precisely that. Such a comment upon such a central part of the trial constitutes reversible error.” McLean did not contest that it was his gun that shot LaTonya and Willie’s sister. “He did, however, attempt to raise doubt whether the critical shots were perhaps caused by the Geddis brothers, and not by himself,” the attorney argues. “The trial court, however, effectively undid this attempt, telling the jury that Mr. McLean himself admitted to the charged shots.” McLean’s attorney urges the Supreme Court to “remind trial courts to be careful in their definition of affirmative defenses. “While it is certainly appropriate to define the relevant affirmative defenses, it is just as inappropriate to instruct the jury that the defendant himself does (or does not) admit the underlying acts.” McLean’s conviction should be reversed because he also received “ineffective assistance of counsel” in violation of his constitutional rights. The evidence in this case raised two justification possibilities: that McLean was protecting himself from the Geddis brothers or that he was protecting his pregnant girlfriend from Willie and his brothers. McLean’s trial attorney asked the judge to instruct the jury on both forms of justification. He specifically requested instructions on force that is necessary to defend himself or a *third party*. “But the trial court did not give Mr. McLean’s requested charge,” the attorney argues. It limited the defense to the force necessary to defend himself. His attorney failed to object to the charges as limiting his client’s defense. The evidence was “sufficient to raise a jury question whether Mr. McLean was justified in defending Ms. Cochran,” his attorney argues, and a “reasonable lawyer would have preserved for appeal the issue of whether the trial court properly rejected Mr. McLean’s requested charge.”

The State argues there was no error in the jury charge. McLean’s attorney “actually requested the charge and certainly did not object to the trial court’s giving it,” the District Attorney, representing the State, argues in briefs. “Further, there is no claim before this Court of ineffective assistance of trial counsel for failure to challenge the substance of the Pattern Jury Charge on affirmative defense as containing an improper ‘comment on the evidence.’” “Since the trial court’s instruction to the jury did not intimate or express an opinion as to what had or had not been *proved*, McLean’s claim is meritless on its face.” McLean’s second claim that his trial attorney was ineffective because he did not object to the judge’s failure to give his requested jury charge on the defense of a third party also “is without merit,” the State argues. At a later hearing, his trial attorney testified that while he initially asked for a jury charge on “defense of self and others,” he later decided to focus on “defense of self” as opposed to “defense of other,” based on the testimony of McLean’s girlfriend, Ashley Cochran. His attorney made a strategic decision to concentrate on the defense that McLean, who was short and slight in stature, feared for his own life when a number of Willie’s brothers attacked him. McLean has failed to meet his burden to prove ineffective assistance of counsel by proving that his attorney’s “decision to pursue self-defense in lieu of defense of others was so patently unreasonable that no competent attorney would have made such a decision under similar circumstances,” the State argues.

**Attorney for Appellant (McLean):** Gerard Kleinrock

**Attorneys for Appellee (State):** Robert James, District Attorney, Lenora Grant, Dep. Chief Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Christian Fuller, Asst. A.G.

**BROWN V. HAMILTON, EXECUTOR (S15A0513)**

A man is appealing a **Fulton County** probate judge's authorization of a will the man says was signed by a family member who was clearly suffering from dementia at the time of its execution.

**FACTS:** Warren Brown, 81, was taken by ambulance on March 28, 2009 to Emory University Hospital Midtown, where he was seen by an emergency room physician, then admitted. The physician noted that Brown had end-stage renal disease and a history of medical problems, including two strokes. She noted Brown was "difficult to interview secondary to confusion." Another physician noted Brown suffered from "vascular dementia." When Brown was discharged from Emory on March 31, the same physician wrote on the discharge order: "Altered mental status." Five days later, Warren Brown signed a will. A month later, Brown died. Christine Hamilton, another family member, was named executor, to carry out the directions of Brown's will. She subsequently presented the will for "probate," or to be authorized by the probate court as a valid will.

The only brief that has been filed in this case is from Robert Brown, the person challenging the will. There is no information in his brief about his relationship to Warren Brown or what the will contains, nor is there identification of Christine Hamilton's relationship to Brown.

Robert Brown filed a "caveat" to the will, challenging it as invalid because Warren Brown was the victim of undue influence due to his diminished mental capacity. The probate judge ruled in Hamilton's favor and authorized the will as valid. "Although Decedent was undoubtedly ill, Caveator presented insufficient evidence to rebut the prima facie case and no specific evidence that he lacked testamentary capacity at the time the will was executed," the judge said. "On this issue, Caveator has failed to satisfy his burden of proof." Brown now appeals to the state Supreme Court.

**ARGUMENTS:** Brown's attorney argues that the factual findings by the probate court were "clearly erroneous," as there was "ample evidence" about Brown's mental capacity when he signed the will. The Georgia Supreme Court has previously held that a "testator," or a person who makes a will before dying, "possesses the mental capacity to make a will if he understands that he is executing a document that will dispose of the property after death, is capable of remembering the property that is subject to its disposition and the persons related to him by blood and affection, and 'has sufficient intellect to enable him to have a decided rational desire as to the disposition of his property.'" In the court's findings, the probate judge herself stated that according to hospital records, Brown was "confused to all but name and place." "Notes from Emory Healthcare on March 29, 2009 indicate decedent had dementia and there are other reports which indicate the same," the judge's findings say. "Neurologic exam reports show decedent was oriented to person, place, time and situation on one occasion and awake and alert, but not oriented to time on another....He was calm but confused." Robert Brown's attorney argues: "Even the probate court's recitation of the facts show that Mr. Brown had dementia and was

confused.” The probate judge did not address the fact that Brown “came into the hospital in delirium and left characterized as demented and in an altered mental status.” “Based on the ample evidence in the record, chiefly the fact that the decedent was mentally compromised when he left the hospital five days before the execution of the will, the probate court erred in finding that the caveators failed to carry their burden showing undue influence,” Robert Brown’s attorney argues. “The medical evidence shows that Mr. Brown did not have the mental capacity to execute a will legally when he did so, leaving the hospital five days before where he was discharged with a diagnosis of ‘altered mental state’ and documentation of dementia.” According to Brown’s attorney, there was a group of people, including Christine Hamilton, who “had established a confidential relationship with Mr. Brown because of his numerous health problems and necessary dependency because of them. Willy Wilson had been his caretaker since Mr. Brown had come to Georgia from New York and was present along with the others when Brown executed the will.” Robert Brown refers to Hamilton and Willy Brown as “members of the family.” He also states that Denika Thomas was the lawyer for Hamilton and had represented her in probate court. Robert Brown states that testimony by him and his sister, Deborah, is “replete with examples of *this side* of the family limiting access to Mr. Brown during the time leading up to his execution of the will and his death a month later.” “The theme of this litigation and of the hearing in this matter is that no one paid attention to Mr. Brown’s mental capacity with regard to making a will,” Robert Brown’s attorney argues. “Also, surprisingly, it appears that the probate court did not either as evidenced by it ignoring key parts of the medical evidence outlined above.” The facts in the medical records “show that Mr. Brown was suffering from dementia and an altered mental state before the execution of the will,” the attorney argues. “The probate court did not comment on the closeness of these dates with its categorical pronouncement that the caveator had failed to shoulder his burden.” “The probate court’s order should be reversed.”

No brief has been filed by Christine Hamilton. Her attorney, Denika Thomas, has withdrawn as her attorney.

**Attorney for Appellant (Brown):** Stephen Morrison, Jr.

**Attorney for Appellee (Hamilton):** Christine Hamilton, pro se