Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, August 15, 2017

10:00 A.M. Session

WOOD V. THE STATE (S17G0042)

A man indicted for child molestation is appealing a Georgia Court of Appeals ruling, arguing the appellate court was wrong to reverse a **Habersham County** court's dismissal of his indictment on speedy trial grounds. At issue in this case is whether a trial court may consider as evidence a statement in court documents that was made by the defendant's lawyer.

FACTS: According to state prosecutors, on three occasions in 2006, Johann Michael Wood allegedly molested L.K. by inserting his fingers into her vagina and touching her breasts. L.K., a member of Wood's extended family, was under the age of 16. After becoming aware that L.K. had made allegations about his conduct to her family, Wood allegedly told one of his sisters that he was considering being chemically castrated. Wood's family and L.K.'s family discussed among themselves how to resolve the matter. L.K.'s mother allegedly told Wood she did not plan to make a police report. However, her boyfriend threatened Wood's life, according to testimony by Wood's father and brother. Wood allegedly left the country on Jan. 9, 2007 to go live with his mother, who was a resident of the Netherlands. Since then, he never has returned to this country. On Feb. 12, 2007, warrants were issued for Wood's arrest but never executed. Nearly two years later, on Jan. 5, 2009, Wood was indicted on three counts of child molestation and three counts of aggravated sexual battery. His arraignment, where a defendant pleads guilty or not guilty, was

set for Jan. 27, 2009, and notice of the hearing was sent to his last known address in Georgia. When Wood did not appear for arraignment, the judge issued a bench warrant to bring him to court. In March 2010, prosecutors asked that the case be dead docketed on the basis that Wood was a fugitive. At some point, Wood moved from the Netherlands to Finland where he is today. On Sept. 9, 2013, Wood was re-indicted on the same charges contained in the 2009 indictment as part of the effort to extradite him from Finland. An arrest warrant was subsequently issued based on the re-indictment, and in September 2013 Wood was arrested and detained in Finland. Wood later claimed that his arrest in Finland was the first time he became aware that charges had been filed against him. On March 23, 2015, Wood's attorney filed a Motion to Dismiss the indictment, arguing that Wood's constitutional right to a speedy trial had been violated by the delays in his case. In the motion, Wood's attorney stated "that the U.S. government executed an extradition request to Finland on October 22, 2013." On June 30, 2015, the trial court granted Wood's motion and dismissed the indictment.

The State then appealed to the Georgia Court of Appeals, which ruled that the trial court erred when it determined there was no evidence that the U.S. government had attempted to extradite Wood because Wood had referenced extradition proceedings in his motion to dismiss and therefore had made an "admission in judicio," or an admission made during judicial proceedings or in a document filed with the court. The Court of Appeals ruled that the trial court should have considered this fact when analyzing Wood's speedy trial challenge. Under the U.S. Supreme Court's 1972 ruling in *Barker v. Wingo,* there is a two-stage analysis for deciding all constitutional speedy trial claims under the Sixth Amendment. The first question is whether the interval from arrest or indictment (whichever occurred first) to trial is sufficiently long to be considered "presumptively prejudicial" to the accused. If the answer is yes, under *Barker,* the trial court must then proceed to analyze and weigh four factors: (1) whether the delay was uncommonly long; (2) who's more to blame for the delay – the government or the defendant; (3) whether, in due course, the defendant asserted his right to a speedy trial; and (4) whether he suffered harm or prejudice as a result of the delay. The Court of Appeals ruled that the reference to extradition proceedings was a significant fact that should have been considered when applying the *Barker* test to decide whether to dismiss the case on speedy trial grounds. Therefore, the appellate court threw out the trial court's order and remanded the case, finding that "the trial court made a factual error regarding a reason for the pre-trial delay that must be reconsidered." Wood now appeals to the state Supreme Court, which has agreed to consider the case to determine whether the Court of Appeals correctly determined that a statement in the defendant's brief constituted "admission in judicio" that the trial court should have considered as evidence in weighing the reason for the delay under *Barker.*

ARGUMENTS: Wood's attorneys argue the Court of Appeals erred because the one-sentence statement regarding extradition in Wood's motion to dismiss his indictment should not be considered as evidence. Wood never agreed to that fact and the State failed to present any evidence regarding its extradition efforts. Even if this Court believes the trial court should have considered the statement in weighing the reason for the delay, it should still reverse the decision by the Court of Appeals. The statement was not "material," or of such significance that it would have changed the trial court's analysis and resulted in a different trial outcome. "Even if the trial court had considered the fact that the State had made an extradition attempt in October of 2013, there is no evidence in the record that Appellant [i.e. Wood] was in any way responsible for the

delay in bringing the case to trial," the attorneys argue in briefs. "As a result, this factor could only be, at best neutral – that is, it could not be weighed against any party. Since all three of the other factors weighed against the State or were neutral and there were no factors that weighed against Appellant, the outcome of the *Barker* analysis would necessarily be the same." This Court should "reinstate the decision of the trial court dismissing the indictment in this case on constitutional speedy trial grounds," Wood's attorneys argue.

The District Attorney's office, representing the State, argues that the statement about the effort to extradite Wood from Finland is an "admission in judicio" that can be considered as evidence in weighing the reason for the delay under *Barker.* The statement was "a concession of a fact believed to be established in the record," the State argues in briefs. "The trial court did not weigh this evidence, and in fact mistakenly concluded that there was no evidence concerning the existence or conduct of extradition. Consideration of counsel's statements is expressly authorized by statute, and the Court of Appeals' mandate that the trial court correctly consider the evidence before it is warranted." Even if the Supreme Court determines that the trial court was not authorized to consider the statement as an "admission in judicio," it is still appropriate to remand the case to the trial court for a proper analysis. Here, "it cannot be overemphasized that the trial court did not weigh evidence but instead relied on its perception that there was *no* evidence of any extradition proceeding," the State argues. As the Court of Appeals noted: "The trial court weighed the reason for the delay after the re-indictment because it mistakenly believed there was no evidence that any effort had been made to extradite Wood. Had the trial court correctly considered the evidence before it, it is possible that it would have weighed the second *Barker* factor differently." "Here the trial court used the incorrect facts to decide the balancing without ruling on the admissibility – or even acknowledging the existence – of evidence on the very matters it found controlling. Its decision on *Barker* balancing cannot be affirmed until it has made an admissibility ruling and weighed the evidence." Therefore, remand is appropriate.
Attorneys for Appellant (Wood): Ashleigh Merchant, John Merchant, III
Attorneys for Appellee (State): George Christian, District Attorney, J. Edward Staples, Asst. D.A.

SUNTRUST BANK V. LILLISTON ET AL. (S17G0433)

SunTrust Bank is appealing a Georgia Court of Appeals decision stemming from a lawsuit, arguing the Court was wrong to agree with a **Fulton County** court that it had waived its right to force the case into arbitration.

FACTS: In 2001, SunTrust Bank loaned about $500,000 to L-T Adventures, Inc. (LTA) to help finance one or more automobile dealerships. The transaction did not include an arbitration provision. In 2005, SunTrust loaned approximately $2 million to Jedon Lilliston (co-owner of LTA) and her former husband in a transaction that was guaranteed by LTA. In connection with the second loan, SunTrust, Lilliston and her former husband entered into an "ISDA Master Agreement," which is also known as a "Swap Agreement." The Swap Agreement contained an arbitration clause that provided for mediation if there were any disputes, and if the mediation failed, "any party may demand arbitration." (Arbitration is a less-expensive alternative to filing a lawsuit and going to court in order to resolve a legal dispute.)

Eventually, a dispute arose between the parties involving the interest charged and collected by the bank in connection with both loan transactions and the Swap Agreement. On

April 9, 2013, Lilliston and LTA filed suit against SunTrust in Chatham County State Court. SunTrust subsequently filed a motion to have the case transferred to Fulton County, which it argued was the proper venue. In August 2014, the case was transferred to Fulton County, where during the ensuing months depositions were taken, SunTrust conducted discovery and filed motions, and the case was put on the trial calendar. SunTrust did not seek arbitration at any time in the process. In January 2015, more than 21 months after first filing their complaint, Lilliston and LTA voluntarily dismissed the action due to a scheduling conflict. On June 19, 2015, they refiled their lawsuit in a "renewal action," as allowed under state law. SunTrust responded and soon filed a motion to compel arbitration based on the arbitration provision contained in the Swap Agreement. The trial court denied it, finding that SunTrust had waived its right to compel arbitration based on its actions in the original litigation. The court found that the bank had participated in litigation for more than a year and a half without raising the issue of arbitration; that it had participated in discovery (the pre-trial process in which the parties request and share information about their cases), and that the case had been placed on the trial calendar before Lilliston and LTA dismissed it. The court concluded that therefore SunTrust had "acted inconsistently with the right to arbitrate," and that the "delay and cost associated with conducting discovery prejudiced [i.e. harmed] the plaintiffs." SunTrust appealed to the Georgia Court of Appeals, but the appellate court upheld the ruling. SunTrust now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals erred in holding that a defendant may be deemed to have waived its right to compel arbitration in a renewal action based on its conduct in the original action.

ARGUMENTS: The bank's attorneys argue that the Court of Appeals erred in ruling it had waived its right to compel arbitration in this renewal action, based on its conduct in the prior action. The Court of Appeals erroneously relied upon the 1990 decision *S & H Contractors v. A.J. Taft Coal Co.* by the U.S. Court of Appeals for the Eleventh Circuit, which held that "a party that substantially invokes the litigation machinery prior to demanding arbitration may waive its right to arbitrate," the attorneys argue, quoting the decision. "A party has waived its right to arbitrate if, under the totality of the circumstances, the party has acted inconsistently with the arbitration right, and in so acting, has in some way prejudiced the other party." However, the bank's attorneys argue, "*S & H Contractors* has no bearing on the issue presented in this case as neither *S & H Contractors*, nor any other case cited by the Court of Appeals in support of its decision in this case, involved a renewal action filed under Georgia Code § 9-2-61. *S & H Contractors* simply does not address the question of whether conduct in a prior case can constitute a basis for waiver of a right to arbitrate asserted in a subsequent *de novo* action." A "de novo" action is a brand new action. But the Court of Appeals' decision "ignores the consequences of the renewal action being a de novo action and the clear precedent set by [the Georgia Supreme] Court stating that a de novo action is a completely new action which does not carry any 'baggage' from the prior action into the renewal action," the attorneys argue. Because the renewal action is a de novo proceeding, SunTrust did not waive its right to arbitrate in this renewal action by its conduct in the prior action. This Court has expressly ruled that, "Defenses which are raised in the renewal action will be adjudicated only with respect to that which occurred subsequent to refiling." By upholding the trial court's decision, "the Court of Appeals has affirmed a ruling that is clearly at odds with the concept of a de novo proceeding," the bank's attorneys contend, and the appellate court's decision should be reversed.

Lilliston's attorneys argue that the Court of Appeals was right that "the trial court correctly followed well-established law in holding that a party to an arbitration clause may waive its contractual right to arbitrate by acting inconsistently with that right to the detriment of the other party to the contract." As the appellate court stated, "the trial court did not hold that SunTrust was barred from demanding arbitration in the renewal action simply because it failed to raise the issue in the original action. Rather, in the renewal action the court considered SunTrust's demand for arbitration but found that SunTrust had waived its right to arbitrate by *acting inconsistently with that right* during the original action." Because a renewal lawsuit is considered a brand new lawsuit under the law, a party may not be prohibited "from raising a proper defense in a renewal action simply because that defense was not raised in the original action," the attorneys argue. Under Georgia law, a renewal action is treated as a new action, and "Defenses which are raised in a renewal action will be adjudicated only with respect to that which occurred subsequent to refiling." "SunTrust is a sophisticated lending institution, and it voluntarily waived arbitration by its own conduct," the attorneys contend. "Appellees [i.e. Lilliston and LTA] will suffer great prejudice if they are forced to arbitrate some of their claims at this late junction, and SunTrust knew it had the right to arbitrate many years ago." The Court of Appeals' ruling should be upheld.
Attorneys for Appellant (SunTrust): David Cranshaw, Simon Malko
Attorneys for Appellees (Lilliston): Brent Savage, Brent Savage, Jr.

JONES V. THE STATE (S17G0118)

A man convicted in **Gordon County** of two theft-related crimes is appealing a Georgia Court of Appeals ruling upholding the convictions, arguing that the crimes were "mutually exclusive" and therefore his convictions should be reversed.

FACTS: On Dec. 5, 2013, Randall Lee Jones rented a 2004 Mazda sedan from Tweety's Automart in East Ridge, TN, located on the outskirts of Chattanooga. The signed rental agreement provided that Jones could drive the car 800 miles and that he would return the car by Dec. 9. Jones later admitted that he drove across the country to California in a futile attempt to see his son. He did not see his son and stayed only a couple of hours before returning to the Southeast. On Dec. 9, 2013, while traveling through Atlanta, Jones ran out of gas. He spent the night in Atlanta but did not call Tweety's, which tried unsuccessfully to reach Jones and reported the car stolen the next day. Law enforcement issued a BOLO alert – "Be on the lookout" – and on Dec. 11, while Jones was driving north on I-75 through Gordon County, a Georgia State Patrolman pulled him over and arrested him. According to Jones, once his mother had wired him funds in Atlanta, he headed back to Chattanooga to return the car. At the time of his arrest, the car's odometer showed that it had been driven 5,109 miles, or more than 4,000 miles more than the authorized amount.

Jones was charged in Gordon County with two crimes: theft by conversion and theft by receiving property stolen in another state. Under a Georgia statute, "A person commits the offense of theft by conversion when, having lawfully obtained…leased or rented personal property under an agreement or other known legal obligation…he knowingly converts the…property to his own use in violation of the agreement or legal obligation." (Georgia Code § 16-8-4 (a)) Under Georgia Code § 16-8-9, "A person commits the offense of theft by receiving property stolen in another state when he receives, disposes of, or retains stolen property which he

knows or should know was stolen in another state…." And under a third statute, called the state's "theft venue statute" (§ 16-8-11), both theft by conversion and theft by receiving property stolen in another state "shall be considered as having been committed in any county in which the accused exercised control over the property which was the subject of the theft."

Following a trial, the jury convicted Jones of both crimes and he was sentenced to five years on each count, with two to serve. The sentences were to be served concurrently or at the same time. He was also fined $1,472 in restitution. Jones appealed to the Georgia Court of Appeals, arguing that the verdicts were "mutually exclusive" because it was impossible for him to have stolen the car in Tennessee and also to have possessed it lawfully in Georgia before converting it to his own use. The appellate court disagreed and upheld the trial court's ruling, finding that the two crimes "can logically mutually exist." "Although Jones lawfully obtained the car, this jury was entitled to infer fraudulent intent to convert the car from Jones' setting out for a destination thousands of miles away from Chattanooga even though the rental agreement specified that he drive the car no more than 800 miles," the Court of Appeals decision says. "When Jones later returned to Georgia in the same converted car, the evidence authorized this jury to conclude that he committed the crime of bringing stolen property into the state." And as the trial judge properly instructed the jury, although Jones' conversion of the car took place well before he arrived in Georgia, under the state's "theft venue statute," venue was established in Georgia because that conversion "shall be considered as having been committed in any county in which the accused exercised control over the property which was the subject of the theft." And because Jones was exercising control over the car in Gordon County, "venue was appropriate in that county," the appellate court ruled. Jones now appeals to the state Supreme Court, which has agreed to review the appeal to determine whether the Court of Appeals correctly interpreted the "theft venue statute" and whether the Court of Appeals was correct that guilty verdicts for both crimes were not mutually exclusive.

ARGUMENTS: Jones' attorney argues the Court of Appeals erred in holding that the verdicts were not mutually exclusive and should have reversed his convictions on both counts regardless of the venue question. "Jones stole the property either inside the state or out of it, but not both," his attorney argues in briefs. "These verdicts are mutually exclusive because the jury could not have rationally found that Jones *unlawfully* possessed the car when he entered Georgia, i.e. it was stolen in Tennessee, but have also found that he *lawfully* possessed the car in Georgia before he converted it to his own use." "The Court of Appeals' second error was its holding that § 16-8-11 allowed Jones to be tried in Georgia for a conversion (that it deemed occurred in another state) because *venue* was proper in Gordon County," the attorney argues. Georgia did not have jurisdiction – or authority – over a conversion that it found occurred in another state. "Georgia's theft venue statute is not a criminal long-arm statute that confers jurisdiction over offenses beyond Georgia's boundaries." Even if Georgia were authorized to prosecute Jones for an *out-of-state* theft, the jury convicted him under *Georgia* law. "The jury was not asked to consider whether he committed a theft under the laws of Tennessee." "If the Court of Appeals were correct that the verdicts are not mutually exclusive, then under its rationale, Georgia would not have jurisdiction over count 1, requiring it to be reversed," Jones' attorney argues.

The State, represented by the District Attorney, argues that the Court of Appeals correctly construed the state's theft venue statute. Jones "exercised control" of the vehicle in Gordon County. Because "the act of driving is certainly exercising control over property and possession

of said property, venue is proper in Gordon County," the State contends. "As the Appellant [i.e. Jones] possessed and exercised control of the motor vehicle in Gordon County, the Court of Appeals correctly construed § 16-8-11 under the facts of this case." Furthermore, the appellate court was correct that the guilty verdicts for both crimes were not mutually exclusive. "The State never argued that the Appellant converted the vehicle in this case to his own use in Gordon County. The Appellant was prosecuted under the venue statute, § 16-8-11, that the State submitted on this issue because the Appellant 'exercised control' over the already converted stolen vehicle in Gordon County." The crimes of theft by conversion and theft by bringing stolen property into the state "do not have conflicting essential elements or share essential elements," the State argues. "The evidence before this jury authorized it to conclude that the Appellant converted the vehicle to his own use outside the State of Georgia and exercised control over it in Gordon County and that he brought this same stolen vehicle into the State of Georgia. It bears noting that the Appellant received a concurrent sentence." In other words, Jones serves no more time for being convicted of both crimes than if he'd only been prosecuted and convicted of one.
Attorney for Appellant (Jones): Tyler Conklin
Attorneys for Appellee (State): Rosemary Greene, District Attorney, Sharon Fox, Sr. Asst. D.A.

2:00 P.M. Session

HALL COUNTY BOARD OF TAX ASSESSORS V. WESTREC PROPERTIES, INC. (S14A1421)
HALL COUNTY BOARD OF TAX ASSESSORS V. PS RECREATIONAL PROPERTIES, I. (S14A1422)
HALL COUNTY BOARD OF TAX ASSESSORS V. CHATTAHOOCHEE PARKS, INC. (S14A1423)
HALL COUNTY BOARD OF TAX ASSESSORS V. MARCH FIRST, INC. (S14A1424)
HALL COUNTY BOARD OF TAX ASSESSORS V. AMP III-LAZY DAYS, LLC (S14A1425)

The **Hall County** Board of Tax Assessors is appealing a local court ruling in favor of five companies that operate marinas on Lake Lanier and that successfully appealed their tax assessments. The Board argues that the Georgia statute on which the ruling was based is unconstitutional.

FACTS: All five companies lease shoreline property on Lake Lanier in Hall County from the U.S. Army Corps of Engineers. All five have added, and own, improvements to the marinas such as docks, swim platforms, bathhouses, and even restaurants and stores, which are assessed for ad valorem taxation purposes by the County. In 2015, the County changed the nature of the assessment, and as a result, the appraisal valuations were far higher than they had been in previous years. Before 2015, the docks and additions were valued and taxed separately as personal property, such as automobiles. After the change, however, they were included within the value of the companies' leasehold interest and valued and taxed as attachments to the realty. Specifically, between 2014 and 2015, the assessments for:

* Westrec Properties rose from $161,383 to $4.9 million, nearly a 3,000 percent increase;

* PS Recreational Properties rose from $1.26 million to $24.5 million, more than a 1,800 percent increase;
* Chattahoochee Parks rose from $396,751 to $13.2 million, more than a 3,200 percent increase;
* March First rose from $845,188 to $4.3 million, more than a 400 percent increase;
* AMP III-Lazy Days rose from $1.23 million to $5.5 million, nearly a 350 percent increase.

Following receipt of the County's 2015 Notice of Assessment for their properties, all five appealed the appraisal valuations to the Hall County Board of Equalization. At a hearing, their attorneys appealed the 2015 assessment on the grounds of uniformity and valuation and argued the proper value of their properties should be the same as the amount for 2014. Their attorneys also asserted that the properties should be taxed as personal property rather than as real property. (Personal property is generally considered property that is movable as opposed to real property or real estate.) Following the hearing, the Board of Equalization upheld the assessments.

On Jan. 1, 2016, House Bill 202 went into effect, amending Georgia Code § 48-5-311 that deals with ad valorem tax appeals. One change was a requirement that within 45 days of a taxpayer's notice to the superior court that it planned to appeal a decision by the Board of Equalization, the Board of Tax Assessors had to schedule a "settlement conference." The statute says that if at the end of the 45-day review period, the board of tax assessors elects not to hold a settlement conference, "then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal."

The marinas filed their "Notice of Appeal" on Jan. 8, 2016 and each included a check to the Hall County Clerk of Superior Court for $210 to cover the filing fee. However, the Board of Tax Assessors failed to issue a notice of a settlement conference within the 45-day deadline, which would have been Feb. 22, 2016. On March 8, 2016, the marinas' attorneys mailed notice of the Board's failure to provide notice of a settlement conference and demanded that the Board "enter into the records of the board of tax assessors" that each marina's stated value was the 2014 value, not the higher value listed in the 2015 Notice of Assessment. The marinas' attorneys also requested they be reimbursed for the legal costs of litigating the matter. The Board of Tax Assessors sent a letter March 17, 2016 refusing to change the stated values in the records. On June 10, the Board's attorneys emailed the marinas' attorneys, giving notice they were scheduling a settlement conference for June 20, 2016. The settlement conference was subsequently held, but the parties were unable to agree on a fair market value of the properties, and the litigation proceeded. In July, 2016, the Hall County judge ruled in favor of the marinas, ordering that the Board of Tax Assessors enter into its records the 2014 value of the marinas and reimburse them for attorneys' fees. The Board now appeals to the state Supreme Court.

ARGUMENTS: The Board's attorney argues that the General Assembly violated the constitutional separation of powers doctrine by divesting the judiciary of its jurisdiction – or authority – over a tax appeal. Here, "the legislature overreaches and improperly exercises a judicial function by 'terminating the appeal' after jurisdiction vests in the superior court." Under § 48-5-311, "the taxpayer invokes the jurisdiction of the superior court by mailing or filing the written notice of appeal to superior court," the attorney argues. Once the judiciary has jurisdiction over an ad valorem tax appeal, the legislature may not take it away. The statute

"deprives the court of control over the tax appeal after the court acquires jurisdiction; the statute usurps the power of the court to control the proceedings." The trial court erroneously "equated failure to send notice of a settlement conference with electing not to hold a settlement conference," and it erroneously determined that the statute establishes a "mandatory time period" to hold a settlement conference. "The General Assembly violated the separation of powers doctrine by divesting the judiciary of jurisdiction over a timely filed ad valorem tax appeal to superior court, which prevents the court from controlling an action over which the court maintains jurisdiction," the Board's attorney argues. And because the statute only applies to an appeal of a tax assessment that was initiated after Jan. 1, 2016, it does not even apply to this case. Any consequence established by the statute applies "only if a board of tax assessors elects not to hold a settlement conference at the end of a 45-day review period and not to the failure to send notice of a settlement conference within 45 days," the Board's attorney contends.

The marinas' attorneys argue that under the amended statute, the superior court lacks jurisdiction over a tax appeal until the taxpayer has exhausted administrative remedies established by the legislature. Under Georgia Code § 48-5-311, "appeals to superior court must follow a two-step process before jurisdiction is conferred on the superior courts," the attorneys argue in briefs. First, a notice of appeal must be filed with the country board of tax assessors within 30 days of the decision being appealed. Second, the board of tax assessors must send a notice of settlement conference within 45 days of the notice of appeal to superior court. "If the board of tax assessors fails to send a notice of a settlement conference within 45 days following receipt of the taxpayer's notice of appeal, the appeal terminates and the taxpayer's stated value is determined as a matter of law to be the fair market value of the property for the tax year under appeal." The General Assembly has the authority to establish judicial procedures for a tax appeal. Here, since the Board of Tax Assessors failed to issue the marinas notice of a settlement conference prior to certifying their appeal to superior court, and since the 45-day deadline expired without notice of a settlement conference, "it must be determined as a matter of law that [the Board] elected to not hold a settlement conference within the mandatory 45-day timeframe." And because the Board "elected to not hold a settlement conference and provide notice of the same to [the marinas] within 45 days, Georgia Code § 48-5-311 (g) (2) requires that [the marinas are] entitled to have 'the taxpayer's stated value…entered in the records of the board of tax assessors as the fair market value."

Attorney for Appellant (Board): Joseph Homans
Attorneys for Appellees (Marinas): J. Ethan Underwood, Lauren Giles

<u>BOZZIE V. THE STATE</u> (S17A1539)

A man convicted of murder for running over a man with his pickup truck, and of aggravated assault for ramming his truck into the van where his girlfriend sat with another man, is appealing his convictions in **Whitfield County** on several grounds.

FACTS: According to the facts presented by the State, on June 1, 2013, Frank Scott Bozzie spent the evening with Jennifer Verner and Richard "Monkey" Morgan at a bar called the Hot Spot. Soon Bozzie and Verner began to date, and within days, Verner moved in with Bozzie, bringing her two daughters with her. In a short time, however, Verner grew frightened of Bozzie and his need to control her, according to the State, and on June 9, she decided to leave him. As a ruse to get help from her parents, Verner told Bozzie she wanted to spend time with her cousin

and convinced Bozzie to drive her to her parents' house where she planned to meet her cousin. For a while, the couple sat outside her parents' home in Bozzie's green pickup truck, waiting for Verner's cousin to return. Eventually, Bozzie left, at which time Verner contacted Morgan and Richard "Click" Holbrook, asking them to come get her. "Monkey" Morgan and "Click" Holbrook were drug dealers. In addition to her romantic relationship with Bozzie, Verner also had an on-again, off-again relationship with Holbrook. Later that night, Bozzie returned to Verner's parents' home looking for her. He sat with Verner's mother late into the night, sending Verner multiple texts, telling her he loved and needed her. Bozzie eventually left Verner's parents' home at about 5 a.m. Around the same time, after Morgan and Holbrook returned to Morgan's home after making a drug sale, Verner went with the two men to a nearby McDonald's for breakfast. As they sat in Morgan's van in the parking lot, suddenly Verner saw Bozzie driving his truck straight toward them. After ramming the van, Holbrook got out while Bozzie got out of his truck and began hitting Holbrook with a baseball, chasing Holbrook away. Bozzie then ordered Verner to get in his truck, but she refused. According to the State, Bozzie then punched her in the mouth. Bozzie left the scene, and Verner, Morgan and Holbrook returned to Morgan's home. Morgan was calling 911from his front yard to report the attack by Bozzie when Bozzie suddenly drove into Morgan's driveway, revved the engine of his truck and ran over Morgan, dragging him about 32 feet. Holbrook ran to assist his friend, found a baseball bat on the ground and began hitting the windows on Bozzie's truck. Verner, meanwhile, tried to lock herself in Morgan's home. Verner initially told law enforcement that she had been alone at McDonald's when Bozzie struck Morgan's van, then changed the story to say a third man had been with her. She was later charged with making false statements. According to the State, Verner knew that Holbrook was involved in drugs – indeed, they had first met at a drug house – and she did not want to get him into trouble as she hoped to have a romantic future with him. At the scene, law enforcement officers tried unsuccessfully to get the truck off Morgan's chest, and he died of asphyxia.

Following a June 2014 trial, a Whitfield County jury convicted Bozzie of multiple crimes, including murder and aggravated assault, and he was sentenced to life without parole plus 51 years in prison. He now appeals to the Georgia Supreme Court.

ARGUMENTS: "Mr. Bozzie's trial counsel was constitutionally ineffective throughout Mr. Bozzie's murder trial, and counsel's deficient performance prejudiced Mr. Bozzie's case time and time again," his attorneys argue in briefs. "When trial counsel was not failing to object or failing to present exculpatory evidence, he was actively telling the jury that Mr. Bozzie had a history of hitting people with trucks, a fact which the court had ruled inadmissible." ("Exculpatory evidence" is evidence supporting a defendant's innocence.) Among five errors made during Bozzie's trial, his attorneys argue the trial court was wrong for refusing to bring Bozzie to court for the hearing on his attorneys' motion requesting a new trial; his conviction must be overturned due to a juror irregularity; the evidence was insufficient to convict him of malice murder; and he received ineffective assistance of counsel in violation of his constitutional rights. In one particularly egregious error, after the trial court ruled as inadmissible evidence of Bozzie's four prior felony convictions, including one in which he tried to ram a police officer's car with his own during a chase, Bozzie's trial attorney brought the convictions up during his direct examination of Bozzie. Apparently, Bozzie's trial attorney made a strategic decision to get out front on the convictions before the State could use them to impeach Bozzie during its cross-

examination of him. Bozzie's trial attorney was also ineffective for failing to object to "numerous improprieties," including the failure to object to the "gruesome" autopsy photos of Morgan's body that were shown to the jury, as well as live photos of Morgan depicting him with "his wife and grandbabies."

The State, represented by the Attorney General's and District Attorney's offices, argues that the trial court properly refused to produce Bozzie for his motion-for-new-trial hearing as his presence was not necessary; his trial attorney rendered constitutionally effective assistance; the trial court properly admitted photos of the victim, which "were relevant to the issues placed before the jury;" and the evidence against Bozzie was constitutionally sufficient. Bozzie's trial attorney explained to him before the trial that if Bozzie wanted to testify, any prior felonies "would be in play," and the attorney knew the State had copies of his prior convictions so "I thought it best to go ahead and get out in front of it on direct examination."

Attorneys for Appellant (Bozzie): Natalie Glaser, Micah Gates

Attorneys for Appellee (State): Herbert Poston, Jr., District Attorney, Susan Beck, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

WOMAC V. THE STATE (S17A1385)

A man convicted in **Whitfield County** of the aggravated sexual battery of a 13-year-old girl is challenging as unconstitutional his sentence to life in prison.

FACTS: In July 2013, Lawrence Edward Womac was living at the Guest Inn motel in Dalton, GA. Also living at the motel was 13-year-old K.W., who stayed with her younger brother and sister and their father. According to the inn's housekeeper, the children's father sometimes locked them out of the room, and residents often gave the children food and watched over them. On the evening of July 19, according to State prosecutors, Womac invited K.W., along with her siblings, into his room to watch television. When K.W.'s sister looked away, Womac, who was in his late 50s, placed his hand down K.W.'s shorts and moved his finger in and out of her vagina. She moved his hand away and went into the bathroom, with him following. Womac began kissing the girl's neck and shoulders while placing his hands on her buttocks and what she called her "front part." He held her against the bathtub and pushed her legs apart, preventing her from leaving. K.W. later testified that Womac put his penis into her mouth and liquid came out that tasted "sour and gross." She said he licked her private parts and placed his penis in her butt and in her vagina. He told her he would hurt her if she told anyone what he did. When he finished, she ran from the bathroom and told her sister she had to leave. A surveillance video showed the girl leaving Womac's room without her sister and brother. K.W. returned to her father's room and threw up. The inn's housekeeper said that the next night, she heard K.W.'s father hollering at two men and threatening to kill them. Dalton police were summoned and they questioned K.W. about the events 20 hours earlier in Womac's room. She told them the details, and the next night she was taken to Hamilton Medical Center where a sexual assault nurse examined her. The nurse testified that K.W. appeared to be emotionally distraught but not in any physical pain. The girl told her what Womac had done to her, stating that she did not believe he had ejaculated inside of her. The nurse testified that bruising on K.W.'s arms and abrasions around K.W.'s vagina were consistent with K.W.'s account. However, samples from K.W.'s person tested negative for male DNA. Forensic biologists from the GBI crime lab testified that

the upper limit for DNA collection from inside a person's mouth is six hours. And a detective testified that the samples from K.W. were not collected right away due to the unavailability of the specially trained nurse at the hospital. By the time K.W. was examined, the State pointed out, K.W. had already changed clothes, thrown up, and used the bathroom, wiping herself clean with toilet paper. Womac left the Guest Inn the day after the assault. A search of his room found an unclean bedroom with animal feces, urine spots, cockroaches, food and open containers. The bathroom, however, was clean and investigators found a bottle of bleach.

At Womac's 2014 trial, the trial court allowed in "prior acts" evidence of incidents involving Womac's daughter and her friend. Womac's daughter testified that her father began touching her inappropriately when she was 5 years old, and later showered with her and began having sexual intercourse with her. She told her mother when she was 10 or 11 but he was never charged. The daughter's friend also testified that in 1996 while at the family's home, Womac rubbed her inappropriately while she was in bed asleep.

Following the trial, the jury found Womac guilty of aggravated sexual battery, child molestation, cruelty to children in the first degree and false imprisonment. He was acquitted of rape, aggravated sodomy, aggravated child molestation and aggravated assault. In October 2014, his attorney filed a memorandum of law attacking the constitutionality of the sentencing scheme in the aggravated sexual battery statute, Georgia Code § 16-6-22.2, which permits a life prison sentence. The trial court rejected Womac's constitutionality arguments, and he was sentenced to life in prison plus a year on probation. Womac now appeals to the state Supreme Court.

ARGUMENTS: Womac's attorney argues that his life imprisonment sentence violates the prohibition against cruel and unusual punishment in Georgia's constitution. The aggravated sexual battery count charged that Womac intentionally penetrated the sexual organ of K.W. with a foreign object: his finger, and that this was done without her consent. Under the statute, the "only punishment proscribed for this offense is either imprisonment for life or a split sentence of 25 years to life, followed by probation for life." The statute does not require a mental intent to violate the statute. Therefore, innocent conduct could run afoul of the aggravated sexual battery statute where, for instance, "a caregiver treating a rash applies a cream or ointment on a young child's or baby's vaginal or anal area," the attorney argues. "Penetration of the sexual organ or anus, however slight, suffices to establish this material fact requirement." The extremely harsh sentencing scheme "requires this Court's intervention and a finding that it violates the Georgia Constitution prohibition against cruel and unusual punishment," the attorney argues. "While Appellant [i.e. Womac] is serving life in prison for a touch with his finger, a person convicted of female genital mutilation may receive a sentence of as little as five years…." Similarly, a person convicted of child molestation may receive a five-year sentence, and yet "the offense of child molestation requires the specific mental intent to satisfy sexual desires and requires the performance of an immoral or indecent act to a child under 16 years of age." Aggravated sexual battery "is an outlier in comparison with other crimes where a first conviction permits a life sentence in terms of the required facts." Such a penalty is reserved for crimes involving "death, actual threats or acts of violence, physical injury, or sodomy." Those crimes include murder, kidnapping, hijacking aircraft, rape, armed robbery and treason. Womac's sentence is one of "gross disproportionality" and should be thrown out, the attorney contends. The trial court also erred by denying Womac's motion asking for a mistrial when the prosecutor elicited "bad character" evidence from Womac's daughter, who said her father now supplies her with

marijuana. “The failure to grant the mistrial constituted reversible error because the evidence was not overwhelming in this case,” Womac’s attorney argues.

The State, represented by the District Attorney, argues that Womac’s sentence is constitutional under both Georgia’s and the U.S. constitutions. “In fact, Appellant [i.e. Womac] fails to show that his sentence of life imprisonment raises an inference of gross disproportionality,” the State argues in briefs. In this case, Womac’s sentence “is consistent with the General Assembly’s goals of deterrence and punishment of sexual predators.” His sentence “is not grossly disproportionate in comparison with other serious violent sexual felonies. Aggravated sexual battery, rape, and aggravated sodomy are all serious violent felonies…that prohibit penetration of a victim with sexual organs or objects against the victim’s will.” Any error in the mention by Womac’s daughter of her father’s drug use was harmless since his right to a fair and impartial trial was not violated. As soon as she mentioned it, the judge immediately told the jury to disregard the remark. The comment was “fleeting,” and no further mention of drug use was made, the State argues. The trial court properly found that Womac’s case was not damaged by the “incidental testimony” and the reference was “too minor in comparison to the properly admitted evidence to affect Appellant’s right to an impartial trial.” Following the court’s ruling and curative instruction, Womac’s attorney did not renew his motion throughout the rest of the trial and therefore did not preserve his motion for appeal.

Attorney for Appellant (Womac): Michael McCarthy
Attorney for Appellee (State): Bert Poston, District Attorney