



## Supreme Court of Georgia

Jane Hansen, Public Information Officer  
244 Washington Street, Suite 572  
Atlanta, Georgia 30334  
404-651-9385  
hansenj@gasupreme.us



## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

**Please note:** *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

**Monday, June 20, 2016**

### 10:00 A.M. Session

#### **IN THE INTEREST OF M.D.H., A CHILD (S16G0428)**

A juvenile is appealing a Georgia Court of Appeals decision that allowed his prosecution for reckless conduct to go forward, even though state prosecutors failed to file a delinquency petition within the deadline required by state law.

**FACTS:** On Dec. 5, 2014, authorities filed a “complaint” against M.D.H., a minor, with the juvenile court of **Cherokee County**. (A complaint is similar to an adult arrest warrant and is the document that must be filed to begin juvenile court proceedings.) The complaint alleged that M.D.H. had “sent threatening text messages telling people he was going to bring guns to school...[and] threatened to kill his friend if he told anyone about his plans.” The same day, a detention hearing was held, and authorities decided it was not necessary to detain M.D.H. On Jan. 6, 2015, prosecutors filed a “petition” alleging delinquency in the juvenile court. Under Georgia Code § 15-11-521 (b), if a child is not detained prior to the court’s judgment in his case, “a petition alleging delinquency shall be filed within 30 days of the filing of the complaint alleging violation of a criminal law or within 30 days of such child’s release pursuant to a determination that detention is not warranted.” The statute goes on to say: “Upon a showing of good cause and notice to all parties, the court may grant an extension of time for filing a petition alleging delinquency. The court shall issue a written order reciting the facts justifying any

extension.” In M.D.H.’s case, the State was one day late in filing its petition, and on Jan. 12, 2015, M.D.H.’s attorney filed a motion to dismiss the complaint because the petition was not filed within 30 days of the complaint as the law required. The State did not at any time file a request for an extension of time. Following a hearing on the motion, in which the State conceded that the petition had been filed a day late, the juvenile court dismissed the complaint, but it did so “without prejudice,” meaning M.D.H. could still be prosecuted. His attorney argued that based on the law, it should have been dismissed “with prejudice,” meaning the case was over and done with and could not be brought back to court. The very next day, the State filed a second delinquency petition identical to the first. M.D.H. filed a motion to dismiss it, but the trial court denied the motion. The case then proceeded to trial, and M.D.H. was found delinquent due to reckless conduct, which is a related but less serious offense than terroristic threats, and he was sentenced to probation. He then appealed both the trial court’s refusal to dismiss the original petition “with prejudice” and his subsequent judgment and sentence. But the Court of Appeals upheld the trial court’s rulings, finding that in § 15-11-521 (b), “the Legislature did not provide explicit language providing that a juvenile would receive a dismissal with prejudice as a result of the State’s failure to file a timely petition for delinquency.” M.D.H. now appeals to the state Supreme Court, which has agreed to review the case to determine whether “the Court of Appeals correctly applied § 15-11-521 (b).”

**ARGUMENTS:** The attorney for M.D.H. argues the Court of Appeals did not correctly apply § 15-11-521 (b), which is part of the state’s new Juvenile Code that became effective Jan. 1, 2014. For one thing, the “backbone” of the appellate court’s decision is the Georgia Supreme Court’s 1996 ruling in *In the Interest of R.D.F.* But that case involved a challenge, under the previous juvenile code, to the time it took for a hearing to be held on a delinquency petition. “The reasoning behind *R.D.F.* does not apply to this case,” M.D.H.’s attorney argues in briefs. The time in which a hearing must be held is dictated by another statute, and the “contexts of the statutes are entirely different.” Georgia Code § 15-11-521 (b) mandates when the State must file a delinquency petition; the other statute imposes requirements on the defendant for demanding a trial and on the trial court for holding a trial within a certain time. The Court of Appeals also failed to read § 15-11-521 (b) “in a natural and reasonable way.” Under the statute, if a child is not dangerous enough to detain, the State has 30 days to file a petition. “If 30 days is not sufficient, then the State must give notice and show good cause for an extension,” the attorney argues. “The court must issue an order reciting the facts justifying an extension.” “The General Assembly stated an exact time limitation for filing the petition and provided a mechanism for giving the State more time. If the State is to have more time, then it must have good cause, so good that the trial court can issue a written order with facts justifying the extension.” The General Assembly mentioned that one purpose for the new Juvenile Code is to preserve and strengthen family relationships. “If the Court of Appeals’ interpretation of § 15-11-521 (b) stands, then the State can intervene whenever it chooses, even in situations where the State fails to file a petition on time,” the attorney argues. The second purpose is to guarantee due process of law through fair hearings at which legal rights are recognized and enforced. “If the Court of Appeals’ interpretation of § 15-11-521 (b) stands, then the due process given in the extension provision is a nullity.” “The provision for seeking an extension of time to file a petition was rendered meaningless by interpreting § 15-11-521 (b) to allow dismissal without prejudice, leading to an absurd result,” the attorney contends. “The State has no reason ever to seek an

extension if it can simply refile any petition dismissed for being filed late.” The General Assembly “unambiguously stated” that an extension may be obtained but only under certain conditions and only after the court provides a written order justifying the extension. The Court of Appeals “gave no consideration to this consequence.” For these reasons, its decision should be reversed, M.D.H.’s attorney argues.

The District Attorney, arguing for the State, “prays that the lower courts’ decisions in this case be left undisturbed.” The State concedes that in the absence of an order granting an extension of time, a petition filed more than 30 days after the filing of the complaint is “defective.” “But the State does not concede that an order granting an extension of time must be filed before the time for filing a timely petition otherwise lapses. Moreover, it would appear that an application for an extension of time to file a petition alleging delinquency...can be filed even after the normal 30-day period for filing such a petition has expired.” The Code is silent on the issue of whether a second complaint may be filed after an initial complaint is dismissed due to the prosecuting attorney’s failure to file a petition within the 30-day time frame, the State contends. Under the new Juvenile Code, “there appears to be no basis for suggesting that only a single complaint may be filed in response to a specific incident. Indeed, presumably any number of complaints involving juvenile conduct may be filed by any and all persons with knowledge of the circumstances of that conduct.” As to *R.D.F.*, that decision “clarifies that, to the extent the General Assembly might wish for the passing of a procedural deadline to mandate a dismissal with prejudice in the delinquency context, all it need do is to explicitly say so,” the State argues. “In the State’s view, the *R.D.F.* decision effectively put the General Assembly on notice as it drafted the new Juvenile Code that dismissals *with prejudice* would be enforced to the extent expressly provided for by statute, but that otherwise such a drastic remedy would not likely be engrafted by the appellate courts. Yet engrafting a mandatory ‘dismissal with prejudice’ remedy for a technical violation of § 15-11-521 that does not otherwise exist legislatively is precisely the result appellant is seeking here.”

**Attorney for Appellant (M.D.H.):** Cory DeBord

**Attorneys for Appellee (State):** Shannon Wallace, District Attorney, Wallace Rogers, Jr., Asst. D.A., Cliff Head, Asst. D.A.

### **IN THE INTEREST OF D.V.H., A CHILD (S16G0546)**

State prosecutors are appealing a Georgia Court of Appeals ruling which they claim conflicts with the same court’s ruling three days earlier in a similar case – *In the Interest of M.D.H., A Child*.

**FACTS:** D.V.H. was charged in **Jasper County** Juvenile Court with criminal damage to property, criminal trespass, and theft by taking. The charges were contained in two complaints that were filed with the clerk of the court on Oct. 8, 2014. As in the *M.D.H.* case, the State failed to then file delinquency petitions within 30 days after the filing of the complaints against D.V.H., as required by Georgia Code § 15-11-521 (b). The statute says that if a juvenile is not in detention, a delinquency petition “shall be filed within 30 days” of the filing of the “complaint” that alleges a criminal law violation, but that upon “a showing of good cause and notice,” the court may grant an extension of time. Unlike the *M.D.H.* case, after missing the Nov. 8, 2014 deadline to file a petition, on Nov. 18, 2014, the State filed a motion asking the court to extend the time limit. But the trial court denied the motion, finding the State had failed to show good

cause for missing the filing deadline. The State then filed two new complaints on Dec. 8, 2014, alleging the same criminal acts as contained in the original complaints. And on Dec. 16, 2014 – only eight days later – it then filed the delinquency petitions, well within the 30-day time frame. D.V.H. objected and filed a motion to dismiss the petitions, arguing the State had overreached its authority in attempting to circumvent the time limits set out in the statute. His attorney argued that if the new cases were allowed to go forward, the prior dismissals would be rendered meaningless, and therefore, the time limits imposed by the statute were meaningless. The State countered that it was authorized to refile petitions in the same way indictments against adult offenders can be refiled in superior court cases, and that the trial court should look to the statute of limitations for criminal cases used in superior court rather than the time limits. The trial court ruled in favor of D.V.H. and dismissed the complaints against him. The State then appealed, but the Court of Appeals upheld the lower court’s ruling, concluding that the new complaints did not reset the 30-day period, because the new complaints regarded the exact same factual circumstances and criminal acts complained of in the dismissed cases. As a result, the appellate court found, the second set of documents were not in fact official “complaints” because § 15-11-521 (b) defines a complaint as the “*initial* document setting out the circumstances that resulted in a child being brought before the court.” In its opinion, the appellate court stated that “allowing the State to file new complaints to restart the clock after missing the deadline for filing a delinquency petition and failing to convince the juvenile court to grant it an extension of that deadline would eviscerate the statutory time limitation for such petitions.” The State now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals correctly applied § 15-11-521 (b).

**ARGUMENTS:** The District Attorney’s office argues for the State that the Court of Appeals erred in its application of § 15-11-521 (b) by concluding that the failure to meet the 30-day deadline for filing a delinquency petition not only results in an automatic dismissal, but in a dismissal that is permanently prevented from being prosecuted. Rather than dismissing the petition “without prejudice,” meaning D.V.H. could still be prosecuted for his crimes, the Court of Appeals assumed the failure to meet the deadline requires a dismissal “with prejudice,” meaning the case is done and cannot be brought back to court and is done. But the statute does not state this and “the legislature did not provide for such a draconian remedy,” the State argues in briefs. As a result, the Court of Appeals has engrafted “prejudice into the statute where none existed previously.” Just three days before deciding this case, the Court of Appeals ruled in *In the Interest of M.D.H.* that it found “the legislature did not intend for the dismissal of a complaint with prejudice for the failure to comply with the filing deadline in § 15-11-521 (b).” The appellate court further stated that if the legislature had “intended for an untimely petition to be dismissed with prejudice, then it is within its power to amend the statute to so provide.” The State argues that the general rule of criminal procedure provides for dismissals of criminal charges *without prejudice*, and that because § 15-11-521 (b) does not address the consequences for failing to file a petition within 30 days, the general criminal procedure rule applies here. The Supreme Court should reverse the trial court’s dismissal of the refiled cases, the State urges.

The attorneys for D.V.H. argue the Court of Appeals correctly applied § 15-11-521 (b) to the facts of this case “as juvenile time limits have been strictly construed in past cases, and the language of the statute supports this conclusion.” At the same time, the “Court of Appeals erred in the application of § 15-11-521 (b) in *In the Interest of M.D.H., A Child.*” As the Court of

Appeals ruled in its D.V.H. decision, “any subsequent complaint on the same circumstances cannot reset the 30 days under § 15-11-521 (b), because it will no longer be the initial document setting out the circumstances.” As the Court of Appeals ruled in 2012 in *In the Interest of C.B., A Child*, “allowing the time limits to be ignored would render the statute pointless,” the attorneys argue. “Removing the power behind the statute removes the incentive to meet the time limits. If the remedy for missing the time limits laid out in § 15-11-521 (b) is to refile the complaint under a different complaint number, then the motion to extend the time limits and the order listing the factual basis for the extension as required by the statute would be rendered superfluous.” “The fact that the statute allows for an extension of the 30 days, requires that good cause is shown in order for it to be granted, and requires a written order from the court justifying the extension, shows the legislative intent that the time limits be strictly construed and the petitions filed beyond the time limits to be dismissed with prejudice,” D.V.H.’s attorneys argue. The Supreme Court “should find that the 30-day deadline is strictly enforced, and the State cannot restart the clock with a new complaint on the same charges.”

**Attorneys for Appellant (State):** Stephen Bradley, District Attorney, Joseph McKinnon, Asst. D.A.

**Attorneys for Appellee (D.V.H.):** Greenberry Moore, III, Public Defender, Bethany Begnaud, Asst. P.D.

### **PANDORA FRANCHISING, LLC V. KINGDOM RETAIL GROUP, LLP (S16G0490)**

A national company is appealing a Georgia Court of Appeals ruling that a lawsuit against it must be tried in **Thomas County** rather than in **Gwinnett County**.

**FACTS:** The appeal in this case involves the interpretation of a Georgia statute and the meaning of the term, “principal place of business.” Pandora Franchising is a limited liability company that is in the business of franchising independent jewelry stores nationwide. The company’s national headquarters are located in Columbia, Maryland. Kingdom Retail Group is a limited liability partnership that was formed in Thomasville, GA, in Thomas County for the purpose of purchasing 28 Pandora franchises from a series of entities owned by a family. The record does not reveal where the entities or family are located. When Kingdom’s attempt to purchase the Pandora franchises failed, Kingdom sued Pandora in the Superior Court of Thomas County, alleging a number of things, including that Pandora had improperly interfered with Kingdom’s attempt to buy the franchises. Kingdom stated in its suit that the “wrongful acts perpetrated by Defendant which form the basis of this Complaint occurred in Thomasville, Thomas County, Georgia.” Pandora immediately filed a “Notice of Removal of Venue,” stating that under Georgia’s corporate venue statute (Georgia Code § 14-2-510), it was entitled to remove the action from Thomas County and transfer it to the Superior Court of Gwinnett County where it “maintains its registered office as its principal place of business in the State of Georgia.” Subsection (b) (4) of § 14-2-510 states that a “corporation authorized to transact business in this state shall be deemed to reside and to be subject to venue...in the county where the cause of action originated.” In addition, it states that if venue is based solely on this subsection, “the defendant shall have the right to remove the action to the county in Georgia where the defendant maintains its principal place of business.” Pandora contends that county is Gwinnett, and attached to the Notice of Removal of Venue was a sworn declaration from a company executive stating that Pandora “transacts business in Gwinnett County, Georgia with and through an

authorized franchisee located in that County” and that it “does not have any other principal office or principal place of business in the State of Georgia.” Kingdom filed an Opposition to the Notice of Removal, arguing Pandora could not remove the case to Gwinnett County because it did not “maintain its principal place of business” there. The Thomas County court held a hearing and ruled in Pandora’s favor, transferring the case to Gwinnett County based on § 14-2-510 (b) (4). Kingdom then appealed to the Court of Appeals which reversed the decision, finding that Black’s Law Dictionary defines “principal place of business” as the “place of a corporation’s chief executive offices, which is typically viewed as the ‘nerve center.’” Under that definition, Pandora’s principal place of business is Columbia, Maryland, the appellate court concluded, instructing that the case be returned to Thomas County. Pandora then filed this pre-trial appeal with the state Supreme Court, which agreed to review the case to decide whether the Court of Appeals correctly interpreted the statute.

**ARGUMENTS:** Pandora’s attorneys argue the Court of Appeals erred. “If allowed to stand, the decision below would deny to companies headquartered outside Georgia the right of venue removal granted to *all* other corporations authorized to do business in Georgia, contrary to the plain language, meaning and purpose of subsection 14-2-510 (b) (4) of Georgia’s venue statute,” they argue in briefs. In its decision, the Court of Appeals has given new meaning to the term, “principal place of business,” and it has devalued “the constitutional principle that a defendant has the right to defend a legal action in a county in Georgia where the outcome is least likely to be affected by prejudice for a plaintiff or against the defendant company. The decision judicially transforms the clear intent of the legislature to balance competing venue interests of the parties, instead affording plaintiffs’ attorneys the unilateral ability to control venue...by alleging where the cause of action arose, in any circumstance where the defendant does not have its national or global headquarters in Georgia. Accordingly, the Court of Appeals decision remanding this case to the Superior Court of Thomas County should be reversed.” The statute grants “the right to remove the action to the county *in Georgia* where the defendant maintains its principal place of business.” Nowhere does Kingdom Retail Group “explain how removal to a defendant’s *global* headquarters – its own preferred reading of the statute – gives any meaning to the words, ‘in Georgia,’” Pandora’s attorneys argue. “Nor can KRG explain the legislature’s use of unconditional language: providing the ‘defendant *shall* have the right of removal,’ and ‘*to the county in Georgia where* the defendant maintains its principal place of business.’ These provisions necessarily presume a company authorized and doing business in Georgia has a ‘principal place of business’ somewhere within this State. Like the Court of Appeals, KRG reads the statute to allow transfer ‘*only if* a defendant’s principal place of business...is located in Georgia’ – but ‘only if’ are not words that the legislature chose,” Pandora’s attorneys argue.

Attorneys for Kingdom Retail Group argue that the Court of Appeals “properly interpreted the plain language of this statute to hold that Pandora, a foreign corporation with its principal place of business in Maryland, could not remove this case from Thomas County to Gwinnett County. In reaching this decision, the Court of Appeals noted that a corporation can only have one principal place of business which is commonly understood to mean its headquarters.” Pandora itself acknowledged in its original application to do business in Georgia, filed with the Secretary of State, that its “principal place of business” was in Maryland. Pandora “does not maintain any ‘place of business’ whatsoever in Gwinnett County, much less a principal place of business,” the attorneys argue in briefs. Pandora “does not conduct operations at a

Gwinnett location, does not have an office or employees in Gwinnett County and does not own or lease property in Gwinnett.” Rather, it hired a third-party company, Corporation Services Company, to serve as its registered agent, and that company happens to be located in Gwinnett. But it is a company that accepts service of process for hundreds of corporations, the attorneys contend. “Any contention that CSC’s Gwinnett County location is Pandora’s ‘principal place of business’ in Georgia lacks merit.” If the legislature had intended to allow a company to remove a case to the location of its registered agent, it could have used that term, as it has elsewhere in the venue statute. “Likewise, if the legislature wanted to allow removal to a place where a corporation claims it has the most contacts, it could have said so. It did not, and instead used a phrase commonly understood to mean world headquarters.” Pandora’s interpretation of the statute would lead to “absurd and unpredictable results,” as defendants could simply manufacture a basis of removal that fits their particular needs, Kingdom’s attorneys argue. “For instance, one removing defendant may say that its ‘principal place of business’ is where it has the most sales, another may say it is where it owns the most property, and another might argue it is where it has the most employees. The possibilities are only limited by the imagination of the removing party, as illustrated by this case where Pandora contends it can remove to a county where it maintains no ‘place of business’ at all. This uncertainty caused by Pandora’s interpretation would surely lead to a multiplicity of litigation.”

**Attorneys for Appellant (Pandora):** Robert Norman, Hays McQueen, Heather Perkins, Kara Lyons, D. Lucetta Pope

**Attorneys for Appellee (Kingdom):** Gregory Harley, Ashby Fox

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

### **CHARLES ANDERSON ET AL. V. DONNA ANDERSON ET AL. (S16A1052)**

### **DONNA ANDERSON ET AL. V. CHARLES ANDERSON ET AL. (S16X1053)**

The adult children of a man who owned a large amount of land in **Warren County** are appealing a judge’s ruling that the older son lacked legal authority to transfer the land to himself and his siblings six days before their father’s death, virtually depleting their father’s estate and leaving nothing for their stepmother.

**FACTS:** Edwin Burton Anderson, Jr. had three children – Charles, Kim and Art Anderson. The father, called “Burt,” remained married to his children’s mother until her death. In 2010, Burt married Donna Lee Morris Anderson. In 1998, Burt had given power of attorney to his oldest son Charles. That power of attorney – which allows a person to designate another to act on his behalf in financial and medical matters – is central to the family’s dispute over the land. Burt died June 26, 2013, and the Warren County Probate Court appointed attorney Robert E. Knox, Jr. as administrator of Burt’s estate for the purpose of paying any creditors for bills still owed and distributing what remained in his estate according to Burt’s wishes. Six days before Burt’s death, his son Charles used his power of attorney to transfer the family property to himself and his siblings. Specifically Charles conveyed about 502 acres to himself and his two siblings as “tenants in common,” meaning it was split equally among them. In addition, Charles conveyed another 284-acre tract just to himself. Charles claims he was carrying out his father’s wishes. The parties dispute whether or not Burt died “intestate,” or without a valid will.

Donna and the estate's administrator sued. In Count One of their complaint, they asked the court to set aside the property deeds Charles had executed conveying the family's timberland to himself and his siblings. Donna and Knox filed a motion asking the court to grant them "summary judgment," which a court grants when the judge determines a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. Donna and the administrator argued the property should be made a part of the estate so that it could be used to pay for a year's support for Donna, for estate bills, and for the expenses of administering the estate. They argued that as a fiduciary having his father's power of attorney, Charles was legally barred from transferring his father's property to himself and his siblings.

In Count Two of their complaint, Donna and Knox asked the court to translate a 1962 will executed by Burt's father in their favor, placing certain real estate into Burt's estate as opposed to going directly to his children upon his death. They also sought to recover certain personal property Charles had transferred to himself before his father's death.

The trial judge ruled in favor of Donna and Knox on Count One and cancelled the deeds transferring more than 700 acres of the land to the children. The judge found that "Charles Anderson breached his fiduciary duty to his father by attempting to transfer his entire estate to himself and his brother and sister without regard to the payment of debts or the rights of his stepmother Donna Anderson. He served his own interest and those interests were adverse to the interest of the principal." The judge found that Charles "could not prevail upon his father to make a new will, so he simply, through the execution of these deeds, wrote Mr. Anderson Jr.'s will for him..." The judge determined that the interests of Burt Anderson included the interests of his debtors and of his estate, including a "year's support" for his widow. Under the law, when an individual is survived by a spouse, he or she is entitled to an allowance from the estate called a year's support. It gets priority over any other debts that due to be paid from the estate.

The judge ruled against Donna and Knox on Count Two, however, finding that under the 1962 will drawn up by Edwin Burton Anderson – Burt's father – two tracts of the family's land were to be Burt's only until he died, after which they automatically would belong to his children.

Charles and his siblings now appeal the ruling cancelling the deeds, and Donna and Knox in a cross-appeal, appeal the ruling regarding the 1962 will.

**ARGUMENTS (S16A1052):** Attorneys for Charles and his siblings argue that Charles and Burt worked together and raised cattle on property that had been in the family more than 200 years, and it was always Burt's intention that the land should go to his children. Burt "always told his children that his property would go to his children and Donna's would go to her children." The trial court was wrong in saying that Burt knew nothing about the land transfers, the attorneys contend. Charles testified that their father asked Charles to execute the deeds transferring the property to Charles and his siblings, and Burt did so the same day he transferred the cows and machinery to Charles. Donna admitted in her deposition that she has no evidence that her husband did not consent to the transfer of the property. The trial court erred in granting partial summary judgment to the children and finding that Charles breached a fiduciary duty to his father, their attorneys argue in briefs. "Charles Anderson transferred his father's ancestral property to himself and his two grown siblings using a valid power of attorney and based upon his father's wishes." While Burt was legally blind, he knew he was dying and was alert and cogent until the end. Burt did not believe he needed a new will because his new wife, Donna, and he had publicly agreed that "what's mine is mine and what's yours is yours," and everyone

understood that his intentions were to give his property to his children. It was understood that “Donna would take none of the Anderson farm property other than what had already been put aside for the house Donna and Mr. Anderson built, and it wasn’t until just before Burt died that Donna mentioned anything about getting 25 acres.” It was only after he died that Donna for the first time said she “wanted a third of everything,” the children’s attorneys contend. The court was therefore wrong to grant summary judgment to Donna and Knox, as it should be left to a jury to decide whether “a grown man who asked his own son and attorney-in-fact to transfer ancestral family property to his own grown children, property that he had long stated would be given to them, was somehow prohibited by law from achieving those desires.” The jury should decide whether the deeds should be set aside and whether Charles was acting in accord with his father’s instructions, the attorneys argue.

Attorneys for Donna and the administrator of Burt’s estate argue the trial court was correct to cancel the deeds because “Charles Edward Anderson breached his fiduciary duty to his father.” There is no evidence that Burt approved of the land transfers or asked his son to sign the deeds. Charles stated that he was “carrying out his father’s wishes,” the attorneys argue in briefs. “In essence, Charles Anderson was making a will for his father which cut out creditors and his stepmother and from which he benefitted the most.” Georgia’s statute on power of attorney grants “broad powers,” “but not powers that would allow a fiduciary to make a gift to himself,” the attorneys argue. “His father was content to allow the property to pass either under his will or through intestacy, either of which would have provided for the payment of money toward his debts and to his wife. When Charles Anderson could not prevail upon his father to make a new will, he simply, through the execution of deeds, wrote his father’s will for him.” There is no issue for a jury to decide and the trial court’s order cancelling the deeds should be upheld.

**ARGUMENTS (S16X1053):** While Donna and Knox prevailed in Count One of their complaint in getting the trial court to cancel the deeds, they lost in Count Two of their complaint. In a cross-appeal, Donna Anderson is appealing the trial court’s ruling that under a 1962 will drawn up by Edwin Burton Anderson – Burt’s father – two tracts of the family’s land were to be included in Burt’s estate only until he died, and then they would automatically be owned by his children. Their attorneys argue that Burt died intestate and the trial court was wrong in its interpretation of one of the items in Burt’s father’s 1962 will that dealt with under 200 acres of the family land. “This land is to go to the surviving heir or heirs of Edwin Burton Anderson, Jr. at his death,” the 1962 will said. The trial court erred in construing that to mean that the land should automatically go to the children when Burt died, the attorneys argue. That sentence “only expressed the testator’s *desire* as to what should happen once his son died.” (The testator is the one who has died and left a will – in this case Burt’s father.) It is not limiting language, Donna’s and Knox’s attorneys argue. By using, “at” his death, instead of “upon” Burt’s death, the will has an uncertain effect rather than a certain effect, they argue.

The trial court’s interpretation of the 1962 will is correct and should be affirmed, the children’s attorneys argue. Contrary to Donna’s and Knox’s interpretation that the phrase “at his death” is in no way an “adverb of contingency,” the adverb “at” is the equivalent of “when” or “upon.” The Supreme Court should uphold the trial court’s ruling that the will meant that once Burt died, the particular land at issue was to be inherited by his children, their attorneys contend.

**Attorneys for Appellants in S16A1052 (Charles):** Thomas Rawlings, Albert Dallas, David Bell

**Attorneys for Appellees in S16A1052 (Donna):** John Long, Robert Knox, Jr., Glee Smith

**WEBB V. REEVES ET AL. (S16A1115)**

The twin sister of a man who died is appealing a **Richmond County** court decision which concluded she had been cut out of her brother's will and had no legitimate claim to his half-million dollar estate.

**FACTS:** This is the second time this case has come before the state Supreme Court involving the will left by Joseph Thomas Schmidt. Schmidt and his twin sister, Judith Webb, had been adopted together as children and raised by the Schmidt family. He served in the Navy and Marine Corps but became disabled after the Veterans' Administration diagnosed him with paranoid schizophrenia in 1973. Schmidt also had hearing and vision difficulties. He received disability benefits from the V.A. until his death Oct. 5, 2013. In 1976, the V.A. appointed Dale Groenenboom as Schmidt's guardian, and Groenenboom served in that capacity for 37 years until Schmidt died. In 1997, Schmidt moved into the Savannah Square Personal Care Home where he would live out his remaining 17 years. The home was owned and operated by Charles H. Reeves, Jr., and his wife, Jerry J. Reeves. Groenenboom, who controlled Schmidt's funds, including his V.A. disability payments and his Social Security benefits, made regular payments to the Reeveses for Schmidt's custodial care and monthly spending allowance. In May 2010, Schmidt was diagnosed with kidney cancer, and Groenenboom suggested he would need a will if he wanted to control the disposition of his assets. Groenenboom contacted Tyler Mahaffey, an attorney who had previously represented the Reeveses, and Mahaffey drew up a will. On July 20, 2010, Schmidt signed the will in his hospital room at the Eisenhower Army Medical Center. Mahaffey brought with him two of his employees to serve as witnesses, as the law requires. Schmidt's V.A. social worker was also present. Groenenboom was not present when Schmidt signed the will, nor were the Reeveses. The will named Groenenboom as executor of Schmidt's estate and the Reeveses and Groenenboom as the beneficiaries. Under the will, the Reeveses each inherited 40 percent of Schmidt's estate or a total of \$400,000, while Groenenboom received the remaining 20 percent or about \$100,000. The will stated: "I have intentionally and with full knowledge omitted to provide for any and all of my heirs, including but not limited to my sister, Judi Webb, who are not specifically mentioned in the terms of this my Last will and Testament."

On Dec. 6, 2013, Groenenboom filed a petition in Richmond County Probate Court to "probate" the will, asking the court to find that the will was valid so the executor could distribute the estate. On March 18, 2014, however, Webb filed a motion asking the court to deny the petition and the final settlement of the accounts. She also filed an objection and "caveat," which is a challenge to a will. Webb claimed that her brother had lacked the mental capacity to execute a will at the time he signed it; that he was "unduly influenced" by Groenenboom and the Reeveses; that they had breached their fiduciary duty they owed Schmidt; and that they had committed fraud against Schmidt and the probate court. In June 2014, the probate court ruled in favor of Webb, finding that Groenenboom and the Reeveses had failed to bring the people who had witnessed the signing of the will to court for the judge's review. As a result, the judge ruled, they had failed to show "that the will was properly executed, made freely and voluntarily, and

that the testator had sufficient mental capacity to make it at the time the will was executed.” The Reeveses and Groenenboom then appealed to the state Supreme Court, which in June 2015 reversed the probate court’s ruling and sent the case back, finding that under the Georgia Civil Practice Act, it was no longer necessary to require the personal appearance of the will’s witnesses as long as their signed affidavits were presented to the court. On remand, the probate judge denied Webb’s caveat, and on July 23, 2015 the court admitted Schmidt’s will to probate. Webb now appeals to the state Supreme Court.

**ARGUMENTS:** Webb argues the probate court erred in denying her caveat because her brother lacked “testamentary capacity” to execute a will under the law as he was not even aware of the size of his estate. Also the medical records demonstrated that he did not have the mental capacity. Around the time the will was executed, a hospital physician wrote that he “was not oriented to date, day of the week, name of institution...or the purpose of his hospitalization.” Her brother suffered from delusions and had been on mind-altering drugs for 40 years, Webb contends. According to attorney Mahaffey, based on his discussion with Schmidt, while each of the Reeveses was to receive 40 percent of his estate, she was to receive the remaining 20 percent. But the lawyer later changed the beneficiary to Groenenboom following a discussion with Schmidt’s V.A. social worker, who indicated Schmidt wanted the remaining 20 percent to go to Groenenboom. The probate court also erred in its analysis of whether undue influence existed because the burden for proving otherwise shifted to Groenenboom and the Reeveses due to the confidential relationship they had with Schmidt. And the sole beneficiaries were the ones who initiated the concept of creating a will and received substantial benefit as a result. “But for the instigation of Mr. Groenenboom and the Reeveses, Joseph would not have prepared a will disinheriting his next of kin,” Webb’s attorneys argue in briefs. The probate court also erred in denying Webb’s motion for a new trial based on newly discovered evidence that Schmidt’s signature on the will was a forgery. This Court should reverse the probate court’s order, grant her caveat and refuse to authenticate Schmidt’s will.

Attorneys for Groenenboom and the Reeveses dispute that Webb was removed from the will as a result of a discussion the attorney had with the social worker. “Actually, Mahaffey advised Schmidt as to the prudence of not completely excluding a family member such as his sister as a beneficiary, but despite the admonitions of Mahaffey, Schmidt insisted that Webb be specifically excluded,” the attorneys argue in briefs. The probate judge correctly found that Schmidt did not lack testamentary capacity or that his will was the product of undue influence. Webb presented no testimony at trial, from medical professionals or others, that any of his maladies compromised Schmidt’s mental ability to make a will. And despite her contention that he “suffered from paranoid delusions and schizophrenia since 1973,” the record “is completely devoid of evidence that he suffered from any delusions or uncontrolled schizophrenia at the time he made his will.” Also, Schmidt’s knowledge of the general nature of his property was wholly sufficient to sustain a finding of testamentary capacity, the attorneys argue. “There is no requirement under Georgia law that the proponent of a will present evidence that a testator had a detailed or precise knowledge as to the full extent of his or her property.” Contrary to Webb’s contention, Schmidt’s medical records support the probate judge’s determination that Schmidt had testamentary capacity. Also there is no evidence that Groenenboom or the Reeveses exercised undue influence over Schmidt in leaving Webb out of his will. “To the contrary, it was quite logical and rational for Schmidt to exclude his sister as a beneficiary,” the attorneys argue.

“She had declined to visit him or call him, on even one single occasion, during the 13 years before he executed his will.” The record shows he denied to employees at the home where he lived that he had any living relatives. The probate court also properly denied Webb’s motion for a new trial based on the supposed discovery of new evidence. There is no “newly discovered” evidence which suggests any forgery, the attorneys contend.

**Attorneys for Appellant (Webb):** Shellana Welch, Chuck Pardue

**Attorneys for Appellee (Reeves):** Troy Lanier, J. Larry Broyles

### **WILLIAMS V. THE STATE (S16A1116)**

A young man convicted of murder in **Richmond County** is appealing his conviction and sentence to life in prison with no chance of parole.

**FACTS:** According to the State’s case at trial, on the night of July 18, 2010, 24-year-old DeAngelo Hudgins called his friend Albert Gilbert for assistance, suspecting he might have trouble with a man named Tony Davis. Davis was angry at Hudgins after hearing Hudgins had choked his sister earlier that night during a fight. Earlier, Hudgins had met with Davis at Davis’s apartment to discuss the matter civilly, but the two got into a shoving match and Hudgins left. He decided later to return to Davis’s apartment and that’s when he asked Gilbert to accompany him. Hudgins and Gilbert, military policemen who had previously served in the Middle East, drove back to Davis’s apartment and began banging on his door, but Davis refused to answer. Instead, Davis called his friend, Erik Albert Williams, Jr. and told him about his run-in earlier with Hudgins. Davis told Williams, who was about 21 years old, that Hudgins had choked his sister and he asked Williams to come over. Williams, who was at his mother’s house at the time, asked his sister’s boyfriend, Edwin Cruz, to drive him to the apartment complex. The two then drove to the complex to meet up with Davis. Meanwhile, after getting no response from Davis, Hudgins and Gilbert returned to Gilbert’s Mustang, but they noticed another car was blocking them. They then walked over to the car to tell the driver to move. By then, Williams and Cruz had arrived and it was their car that was blocking Hudgins and Gilbert. Williams, who was sitting in the passenger’s side of the car, later testified that Hudgins and Gilbert were shouting and moving aggressively toward Cruz’s and Williams’ car, asking who they were and what they wanted. State prosecutors, however, said Hudgins and Gilbert were not moving aggressively, were unarmed and did not threaten Williams and Cruz. When Hudgins bent down to talk to Williams, Williams yelled and fired two shots. Cruz and Williams then drove away. Gilbert, who was shot once, sustained a fractured hip. Hudgins, who was shot in the abdomen, later died. A few weeks after the shooting, Williams contacted his parole officer and surrendered to police. He at first denied any involvement in the shooting during an interview by investigators with the Richmond County Sheriff’s Office, but he later admitted it was he who had shot Hudgins and Gilbert.

A grand jury jointly charged Williams and Cruz with the malice murder and felony murder of Hudgins, the aggravated assault of Gilbert, and gun charges. The two were tried separately, and during his trial, Williams took the stand and stated he had fired his weapon after Hudgins leaned into his car window and reached behind his back, leading Williams to believe he was reaching for a gun. He said he fired his gun because he felt threatened by Hudgins and Gilbert, who were much bigger than he was. The jury convicted Williams of all charges but one of the gun charges and he was sentenced to life without parole. Williams now appeals to the state Supreme Court.

**ARGUMENTS:** Williams’ attorney argues the trial court made four errors, including agreeing with the State that Williams’ trial attorney discriminated in choosing the jury. Specifically, the trial court found that the defense attorney struck three potential white jurors based on their race and not due to race-neutral factors. The trial court also erred in deciding that Williams placed his character at issue during the trial when he mentioned during questioning by the State that he was on parole, thereby opening the door for the State to let the jury know about Williams’ prior convictions. “The harm to Erik Williams’ case was significant,” his attorney argues in briefs. “The actions of the prosecutor illustrates the value he placed on this evidence in his pursuit of a conviction.” And the trial court erred in overruling Williams’ objection to the prosecutor’s closing statement in which he challenged the truthfulness of Williams’ testimony about his size compared to that of Hudgins and Gilbert. Specifically, the prosecutor said, “if that defendant ever weighed 125 pounds I would be a son of the gun because I just don’t believe it.” “The longstanding rule is that counsel may not state to the jury his or her personal belief about the veracity of a witness,” Williams’ attorney argues. “The prosecutor’s improper statement, compounded by the trial court’s refusal to rebuke him, was a direct and improper attack on the defendant’s right to have an impartial jury decide his case on the evidence.” Finally, Williams trial counsel rendered “ineffective assistance of counsel” in violation of his constitutional rights based on several things, including the attorney’s failure to call Cruz as a defense witness and introduce favorable evidence for the defense, and his failure to communicate a favorable plea bargain offer to Williams, which he would have accepted had he known about it.

The District Attorney’s office and Attorney General’s office, representing the State, argue the trial court acted within its discretion in reseating the three white jurors after the State successfully laid out a case of discrimination. After jury selection, the jury consisted of one white juror and was 83 percent black, even though the jury pool from which the jurors were chosen was 64 percent black and 33 percent white. “The trial court properly found that defense counsel’s explanations for three of the jurors were implausible or unpersuasive,” the State argues in briefs. The trial court properly found that Williams himself opened the door to allowing in evidence of his prior convictions when he said, unsolicited, that he was on parole at the time Hudgins was killed. The trial court also correctly overruled Williams’ attorney’s objection during the prosecutor’s closing argument. “The prosecutor’s comment was harmless,” the State argues, and it was “a reasonable inference from the evidence.” Finally, Williams’ claims that his trial attorney was ineffective “have no merit,” the State contends. The decision not to call Cruz as a witness was reasonable as Cruz’s statement to police had been “all over the place,” the trial attorney later stated, adding that “if he had been a more reliable stable witness, no record, believable, I might have thought more seriously about calling him.” The “claim that trial counsel did not communicate a plea offer is untrue.”

**Attorney for Appellant (Williams):** John Kraft

**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., ainmee Sobhani, Asst. A.G.