



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, April 18, 2017

10:00 A.M. Session

JOHNSON STREET PROPERTIES, LLC V. CLURE (S17A0811)

CLURE V. JOHNSON STREET PROPERTIES, LLC (S17X0812)

Owners of an apartment complex are appealing a **Haralson County** judge's ruling that allows a lawsuit against them – brought by a woman who was hit by a tree – to go forward to a jury trial.

FACTS: The Johnson Street Apartments are a small complex of three single-floor buildings with a total of 17 units in Bremen, GA. The complex is one of four properties owned by Johnson Street Properties, which is one of several corporations owned by Dan and Elaine Cartwright and their three adult sons. Cynthia Clure rented Unit 11 beginning in September 2012. The parties dispute the facts, but on March 30, 2013, Clure asked Steve Wilburn, also a tenant, to take a look at a large branch that had fallen against the back-corner roof of her neighbor's apartment. The branch had lodged on the roof/gutter area so that it was horizontally suspended in midair, parallel to the ground. Clure claimed she had called and left messages for the Cartwrights about the hazard; they claimed they never received them. The parties also dispute how long the limb was there and whether the owners should have known about it. Clure claimed the limb was there for nearly three months following a severe storm in January. One of the Cartwright sons disagreed it was there more than a couple of weeks as the apartment property

was regularly checked two or three times a week. Wilburn assumed it had broken off during a different storm and had been there only a few days. But he said he only learned about it from Clure and that it was possible it had been there longer. Also in dispute is whether Wilburn was a handyman who formally worked for Johnson Street Properties. She claimed in briefs that when she moved in, Cartwright introduced her to Wilburn as “their maintenance man;” Johnson Street Properties claimed in briefs that while Wilburn had done odd jobs for them in the past, he did no work for them in 2013. On March 30, after Clure contacted him, Wilburn tried to remove the branch by throwing some rope over the limb. The slight weight of the rope, however, apparently caused the limb to come loose from the gutter and “swing out” sideways rather than falling straight to the ground. Wilburn claimed the limb hit Clure, whose back was to him, “like a baseball bat hitting a ball.” She woke up later in the intensive care unit with a broken clavicle, broken ribs and three broken vertebrae. Her lungs were punctured, and her shoulder, elbow, knee and hips were injured, and she sustained a partial vision loss in her right eye. She spent 10 days in the hospital and says her injuries are permanent.

Clure sued Johnson Street, claiming it was negligent in breaching its duties to properly inspect and maintain its premises in a safe condition, by failing to remove the tree, and by failing to warn Clure about it. She also alleged that Wilburn was Johnson Street’s “agent” and he was actively negligent in causing her injuries. Johnson Street filed a motion asking the court to grant “summary judgment” in its favor. (A judge grants summary judgment upon deciding that the facts are undisputed and the law falls squarely on the side of one of the parties.) The judge denied Johnson Street’s motion, ruling that “the evidence is in dispute as to whether Ms. Clure’s knowledge was or should have been superior” to Johnson Street’s knowledge about the hazardous limb. The judge said that whether an ordinary person would expect a broken horizontally suspended tree to swing unexpectedly sideways and strike her wherever she was is a question that should be decided by a jury. Johnson Street eventually named Wilburn as a “nonparty at fault” and also blamed Carson L. Smith and Carson M. Smith, the owners of the adjacent undeveloped tract of land from which Johnson Street alleged the limb had originated. Johnson Street claims that before Clure was injured, it had warned the Smiths about their diseased and dying trees. Johnson Street wanted fault apportioned to the Smiths. In response, Clure filed a motion asking for summary judgment on this issue, arguing that the apportionment statute was unconstitutional and that there was no evidence the Smiths knew that their diseased tree would fall on Johnson Street’s property. The judge granted her motion based on her second argument but rejecting her motion on the ground that the statute was unconstitutional. Johnson Property now appeals the trial court’s ruling that allows the lawsuit to proceed, while in a cross-appeal, Clure appeals the trial court’s denial of her constitutional challenge.

ARGUMENTS (S17A0811): Johnson Street’s attorneys argue the trial court erred in denying its motion for summary judgment and allowing the lawsuit to be decided by a jury. Clure had knowledge about the dangerous tree and her knowledge was superior to the owner’s knowledge. “It is undisputed that Johnson Street had no knowledge that Mr. Wilburn would attempt to bring the tree down while Ms. Clure was nearby directing him,” the attorneys argue in briefs. “The defendant is entitled to summary judgment if there is no evidence that it had superior knowledge or if the undisputed evidence demonstrates that the plaintiff’s knowledge of the hazard was equal to or greater than that of the defendant.” Johnson Street also was entitled to summary judgment due to Clure’s failure to exercise ordinary care for her personal safety. She

herself testified she could have avoided walking under the tree and did not need to go near it to access her apartment, the complex's attorneys argue. Also, "Johnson Street cannot be vicariously liable for Mr. Wilburn's actions because it never asked him to remove the tree, and he was never an employee." As to the Smiths' liability, the trial court improperly ruled that their actions or omissions with respect to the dead tree were too remote to be the direct cause of Clure's injuries. "The Smiths could have reasonably foreseen that their dead trees could fall and injure someone," the attorneys argue, and "the actions of Ms. Clure and Mr. Wilburn in removing the tree were triggered by the Smiths' negligence."

The trial court properly ruled that summary judgment is not warranted because Johnson Street "stuck its head in the sand" to avoid its legal duties, Clure's attorneys argue. The owners had "actual and constructive knowledge of the suspended limb" because Clure called Dan Cartwright's cell phone and left voicemails at Johnson Street's office specifically notifying them. Even taking Johnson Street's word that it did not actually know of the limb, "a jury may still find it should *and would* have known but for its own willful ignorance and negligence." Photos prove that even "drive-by inspection" would have revealed the horizontally-suspended limb. In light of a landlord's duty to comply with housing and building codes, landlords and owners are presumed to have knowledge of any defects, "and noncompliance is proof of their superior knowledge of a defect," the attorneys contend. "When evidence shows a tenant/invitee like Ms. Clure only generally apprehends a defect but lacks subjective knowledge of the specific danger attendant thereto, summary judgment is forbidden and a jury must decide her knowledge and negligence." And when evidence shows a third party like Wilburn was the agent of an owner/landlord like Johnson Street, "summary judgment is forbidden and a jury must decide his active negligence and Johnson Street's vicarious liability." Finally, summary judgment is required when a defendant cannot show that "nonparties" like the Smiths are at fault for the plaintiff's (Clure's) damages. "There is no evidence the Smiths knew or should have known the subject tree would inevitably fall on Johnson Street's property," Clure's attorneys argue.

ARGUMENTS (S17X0812): In the cross-appeal, Clure's attorneys argue the trial court erred in declining to find that Georgia's apportionment statute (Georgia Code § 51-12-33) is unconstitutional. The statute violates the due process clauses of the Georgia and U.S. constitutions because it permits people, such as the Smiths, to be formally accused and adjudged of intentionally or negligently harming or killing someone without notice or an opportunity to be heard in court, the attorneys contend. The statute also violates the equal protection clauses of both constitutions because it is not narrowly tailored to a compelling interest and it lacks adequate safeguards. Finally, Johnson Street is wrong that Clure lacks standing to challenge the constitutionality of the statute. "A party has standing to challenge the constitutionality of a statute if the statute adversely impacts the party's rights," her attorneys contend.

The trial court made the correct ruling as the apportionment statute is constitutional and designed to require a defendant to pay for damages it caused rather than damages caused by another. "The statute is also intended to deter plaintiffs from seeking out deep-pocket defendants that are only minimally at fault in an attempt to maximize recovery," Johnson Street's attorneys argue. "More than 30 states have shifted to 'fair share' liability schemes" that are similar to Georgia's statute. "The Court should reject Ms. Clure's cross-appeal improperly challenging the apportionment statute, as she was not adversely affected by the trial court's ruling granting partial summary judgment to her on Johnson Street's apportionment defense, and she has no

standing to assert the constitutional rights of the Smiths. And, even if she had standing, her cross-appeal fails because there has been no violation of any due process or equal protection rights.”

Attorneys for Appellant (Johnson): Wayne Tartline, W. Randal Bryant

Attorneys for Appellee (Clure): James Sadd, Edward Wynn

MCBEE ET AL. V. ASPIRE AT WEST MIDTOWN APARTMENTS, LP (S17A0683)

A man and his wife are appealing a **Fulton County** judge’s ruling in favor of an apartment complex over a disputed piece of property the couple claims they own by virtue of the fact they used and maintained it continuously for 36 years.*

FACTS: In 1974, Thomas McBee, in the settling of his late grandmother’s estate, signed a quitclaim deed to become owner with his wife Mary of property located at 652 Green Street, NW in Atlanta. The McBees have lived there since. Betty McBee Taylor, Thomas’s aunt, also signed a deed becoming owner of 642 Green Street, NW. The property at issue in this dispute is a 24-foot by 58-foot strip of property that lies between those two properties. From 1978 until 2014, Thomas and Mary McBee claim they stored on the disputed property a number of items, including a large yellow trailer, industrial air compressor, Chevrolet motor and transmission, a Ford van and miscellaneous auto parts. They claimed that throughout the years, they maintained and landscaped the property. And they claimed they erected “No Trespassing” signs on the property and placed concrete parking stops in the driveway to keep others from trespassing. By exercising exclusive dominion over the disputed property for 36 years, they claim they are the rightful owners of the property by “adverse possession.” Under Georgia Code 44-5-161, to claim adverse possession of property, a party must show it alone has possessed the property in a “public, continuous, uninterrupted, and peaceable” way, and it must be accompanied by a “claim of right.” Possession of the property for a period of 20 years confers “good title by prescription to the property.” Since the McBees acquired the property at 652 Green Street, there have been three owners of 642 Green Street, and today, Aspire at West Midtown Apartments, L.P. owns what used to be called 642 Green Street. The Apartments’ owners claim they have title to the disputed property and the McBees are trespassers. They filed a motion for “summary judgment,” which a judge grants upon deciding that the facts are undisputed and the law falls squarely on the side of one of the parties. The trial court ruled in their favor and granted the motion, finding that Tom McBee had knowledge of the boundary lines between the 652 property and the 642 property based on the deed he signed in 1974, and that knowledge precluded his claim of adverse possession. The McBees now appeal to the state Supreme Court.

ARGUMENTS: The McBees’ attorneys argue the trial court erred in ruling in favor of the Aspire apartments’ owners related to the McBees’ adverse possession claim and Aspire’s claim they were trespassing. By exerting exclusive and continuous dominion over the disputed property, the McBees had a claim of right. “Georgia courts have long held that a ‘claim of right’ is synonymous with a claim of ownership and **will be presumed from the assertion of dominion,**” the attorneys argue in briefs. The McBees were never trespassers of the disputed plot of land. Tom McBee’s execution of the quitclaim deed shows at most that he had only “constructive knowledge,” not “actual knowledge” of the boundary lines between the 642 property and the 652 property. (Actual knowledge is actually knowing something; constructive knowledge is something one could reasonably be expected to know.) The judge was wrong to

find that “Tom McBee had actual knowledge that his property did not extend into the disputed property such that any acts of dominion asserted by Appellants [i.e. the McBees] over the disputed property were merely acts of trespass,” the attorneys argue. Tom McBee testified in his deposition, and he submitted affidavits, that he signed the quitclaim deed when he was only 20 years old as part of the settling of his grandmother’s estate, that no one had shown him the location of the boundary line between the two addresses, and that he was not able to point to the location of the boundary line between the properties. “There is no evidence that Appellants possessed the disputed property in spite of knowing that the disputed property belonged to another,” the attorneys contend. Aspire has no evidence that the McBees had actual knowledge of the boundary lines and therefore acted in “bad faith” by adversely possessing the disputed property. Indeed, Aspire failed to present evidence “conclusively establishing the exact location of the boundary line between the 642 property and the 652 property,” the McBees’ attorneys argue. “Therefore, there is no evidence supporting Appellee’s [i.e. Aspire’s] presumption that the disputed property is in fact part of Appellee’s property.” The trial court should have viewed the evidence and found that a jury question about the facts exists rather than granting summary judgment to Aspire without a jury trial.

The Aspire apartment complex’s attorney argues that the “McBees are trespassers and thus cannot claim title by adverse possession.” Under Georgia law, “One must enter upon the land claiming in good faith the right to do so,” the attorney argues, quoting the Georgia Supreme Court’s 1989 decision in *Halpern v. Lacy Investment Corporation*. “To enter upon the land without any honest claim of right to do so is but a trespass and can never ripen into prescriptive title....[S]uch a person is called a ‘squatter.’” The deed McBee signed in 1974 specifically stated, “THE PURPOSE of this deed is to establish proper boundary lines” between the property he was acquiring and the property his aunt was acquiring. “Importantly, Georgia law holds that one cannot have a valid adverse possession claim if the claimant is knowingly trespassing upon the land being claimed.” The McBees had actual and constructive knowledge of where the boundary line between the two properties was located, Aspire’s attorney argues. Tom McBee and his Aunt Betty had good reason to execute boundary line deeds between their two properties. As Tom McBee testified at his deposition, “My aunt hated me.” The McBees never sought permission from any of the various owners of the disputed property to place their personal items on the property or to use it as a driveway; they never sought permission to maintain or landscape the disputed property. The “McBees’ various incursions across the property line to ‘use’ the disputed property over the years were nothing more than repeated trespasses,” Aspire’s attorney contends. Under Georgia law, “mere use alone does not constitute a ‘claim of right’; the claimant must be acting under a bona fide belief that they own the property.” The McBees knew they did not, Aspire’s attorney contends.

Attorneys for Appellants (McBees): Roy Banerjee, Angelina Whitaker

Attorney for Appellee (Aspire): James Blum, Jr.

* Under 2016 legislation, in the future, appeals in cases such as this, involving disputes over who has legal title to property, will be handled by the intermediate Georgia Court of Appeals rather than by the state’s highest court.

OLEVIK V. THE STATE (S17A0738)

A man convicted in **Gwinnett County** State Court of Driving Under the Influence (DUI) is appealing his conviction and requesting a new trial on the ground that Georgia's implied consent statute is "unconstitutionally coercive."

FACTS: On June 6, 2015, a Gwinnett County police officer stopped Frederick Olevik (also known as Frederik William Plevik) for failure to maintain lane and no tail lights. The officer turned the investigation over to another officer with the police department's DUI Task Force. That officer noticed that Olevik had bloodshot and watery eyes, slow speech and was emitting a strong odor of alcohol. The officer performed Standardized Field Sobriety Tests on Olevik, including having him blow into an Alco-sensor, although the officer told Olevik that this test was not the same as the state-administered breath test. The result from the Alco-sensor test was positive. When the officer told Olevik he was under arrest for DUI, Olevik suddenly began to sweat profusely and acted as if he were about to faint. The officer called medical services to the scene and placed Olevik in the back of his patrol car where he then read to him Georgia's Implied Consent. Under Georgia Code § 40-5-67.1, the arresting officer must read the arrestee the implied consent notice, which states: "Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial." The notice goes on to say that if the test results show an alcohol concentration of .08 grams or more, which is the legal definition of intoxication, the person's license may be suspended for a minimum of one year. And the notice says that after taking the state tests, the person may hire his own qualified expert to conduct the same tests. Olevik agreed and submitted to the test. He was then charged with DUI less safe, DUI unlawful alcohol concentration, failure to maintain lane and no brake lights.

Olevik's attorney filed a motion to suppress the results of the state-administered breath-alcohol test, challenging the constitutionality of Georgia's implied consent notice. The trial court denied the motion to suppress and in September 2016, Olevik proceeded to a bench trial (before a judge with no jury). He was convicted of all charges and sentenced to 24 hours in jail with credit for 24 hours time served, plus 12 months on probation, 40 hours of community service, a DUI risk reduction course and drug and alcohol substance abuse evaluation, and an \$800 fine. Olevik does not contest his convictions for failure to maintain lane and no brake lights. Rather, he now appeals to the state Supreme Court the trial court ruling for not finding the implied consent notice unconstitutionally coercive.

ARGUMENTS: Olevik's attorney argues that his submission to the state-administered breath test was illegally obtained and further, that the trial court erred in considering the results of the illegally obtained test in determining Olevik's guilt. The legal foundation supporting Georgia's current implied consent notice has been "completely dismantled by recent case law," the attorney argues. In 1973, the Georgia Supreme Court ruled in *Strong v. State* that a test to determine alcohol concentration violated neither the Fourth Amendment against unreasonable search and seizure, nor the Fifth Amendment against self-incrimination. While the *Strong* decision involved a blood test, this Court expanded its holding to include breath tests. However,

in 2015, the Georgia Supreme Court overruled *Strong*, ruling that the Fourth Amendment requires actual consent in absence of a warrant. But Georgia's implied consent notice statute reads, "Georgia law *requires* you to submit to a state-administered chemical test..." "The 'requirement language' of Georgia's implied consent notice is now not only inaccurate, it is the exact opposite of the current state of the law," Olevik's attorney argues. The statute also violates a suspect's right to due process because it is false and misleading. For instance, the notice threatens the driver "with the use of his refusal at trial, but does not warn him that the test result will be used against him at trial (which of course, is the primary purpose of seeking the test)," the attorney argues. The statute "was already confusing enough before it became dismantled by recent changes to the law," the attorney argues, noting that it is written at a 14.6 grade level, compared to the typical *Miranda* warning on the right to remain silent, which is written at a 9.5 grade level. The compelled breath testing also violates the Georgia Constitution, which provides much greater protections against self-incrimination than the Fifth Amendment of the U.S. Constitution. Under the State constitution, the only way the State can get a suspect to blow into a device for testing is through his actual consent. Georgia's current implied consent notice cannot substitute for *Miranda* warnings when the State seeks a breath test. "Because a breath test, unlike a blood test, implicates Georgia's right against self-incrimination, even an in-custody suspect's actual consent may not be requested without the suspect first being advised of the right against self-incrimination." "In Georgia, asking an arrestee if he will perform an incriminatory act is equivalent to asking him to answer incriminating questions."

The State, represented by the Solicitor General, argues that the trial court properly ruled that the statute does not violate the federal or state constitutions "because the State may constitutionally compel a breath test pursuant to implied consent as a search incident to arrest." "While this Court's holding in *Williams v. State* wrought significant changes to Georgia jurisprudence regarding the implied consent notice, it did not 'completely dismantle' the legal foundations of implied consent as argued by Appellant [i.e. Olevik]." In *Williams*, the high court considered a warrantless *blood* test, a more invasive test than a breath test. Also, the U.S. Supreme Court's ruling in *Birchfield v. North Dakota* constitutionally permits the State to obtain a breath test as a search incident to arrest under the Fourth Amendment. In that decision, the nation's high court "concluded that the Fourth Amendment permits States to obtain breath samples from individuals arrested for DUI without a warrant," noting that "States...have a paramount interest...in preserving the safety of...public highways," and that the U.S. Supreme Court's cases "have long recognized the 'carnage' and 'slaughter' caused by drunk drivers." The Georgia Supreme Court's application of *Birchfield* "not only is permissible under the existing framework of Georgia's Fourth Amendment law, but that application would also dovetail with this Court's holding in *Williams*," the State contends. The trial court properly ruled that the statute does not violate the Georgia Constitution by compelling a defendant to produce self-incriminating evidence. The *Williams* decision does not change prior rulings that Georgia's implied consent laws "do not violate our self-incrimination protections." And Georgia's "more expansive interpretation of the U.S. Constitution's Fifth Amendment right against self-incrimination does not extend to the collection of substances, like exhaled breath, that are naturally excreted by the body," the State argues. Finally, Georgia's implied consent statute does not violate Olevik's due process rights as established by Georgia's Constitution and the Fourth,

Fifth, and Fourteenth Amendments of the U.S. Constitution, and the trial court properly admitted his test results at trial.

Attorney for Appellant (Olevik): Lance Tyler

Attorneys for Appellee (State): Rosanna Szabo, Solicitor-General, Samuel d'Entremont, Asst. Sol.-Gen.

GLENN V. THE STATE (S17A0858)

In this **DeKalb County** case, a young man is appealing his conviction for murder in the shooting death of a man.

FACTS: On Feb. 3, 2015, Teneisha Johnson drove her former boyfriend, 19 or 20-year-old Delron Shuntarius Glenn, known as “Uzi,” to the Affordable Inn Motel in DeKalb County. On Feb. 3, 2015, John William Tanner was also at the Affordable Inn where he was seen buying drugs and engaging prostitutes. According to briefs filed in the case, Tanner was a former mortgage loan officer who lost his business during the economic downturn. When his business failed, his wife left him and his life spiraled into drug abuse and addiction. On Feb. 3, Johnson dropped Glenn off at the back of the motel where he met his older brother, Calvin “Kirkwood” Glenn, Stanley “Man” Kitchens, and an unidentified male. Tanner’s Corolla was parked at the back of the motel. Kitchens later told investigators Calvin had told him that Tanner owed him money for drugs and he had asked his younger brother to meet him at the Affordable Inn to confront Tanner over the money. Tanner had allegedly gotten a room at the motel for the purpose of “tricking off” with a prostitute, according to briefs. When Tanner later left the room to retrieve something from his car, Kitchens said he saw Calvin and Delron Glenn follow Tanner to his car where they began roughing him up. According to State prosecutors, they then stole Tanner’s briefcase, keys to his home, and his cell phone. Shortly after, a witness heard a gunshot coming from Tanner’s car and saw the Glenn brothers get out of the car. Kitchens also heard the gunshot and saw Tanner lying on the ground beside the car. He later said he also saw Delron Glenn holding a small silver gun, although he did not witness the shooting.

The motel’s video surveillance caught the shooting and the robbery, but the poor quality made distinguishing faces difficult. Sometime after the shooting, Delron Glenn called Johnson and asked her to come pick him up, stating that he had “f---ed up.” When police arrived on the scene, they found Tanner unresponsive with the car still running and the door open. Investigators found an empty LG cell phone box in the back seat of Tanner’s car and an empty cell phone holder on Tanner’s belt. Tanner died from a shot to his abdomen. During the autopsy, the medical examiner collected a .25 caliber metal-jacketed bullet from Tanner’s abdomen.

Police used still photos from the video surveillance to help identify the suspects. Upon seeing the stills, ex-girlfriend Johnson said she was certain Delron Glenn was one of the people shown. Soon after the murder, police arrested Calvin Glenn near the apartments. Six days later, they apprehended Kitchens. A week after the murder, a DeKalb Fugitive Squad arrested Delron Glenn at his sister’s apartment where, during a search, investigators later found Tanner’s cell phone. The Glenn brothers and Kitchens were indicted with malice murder, felony murder based on armed robbery, felony murder based on aggravated assault, armed robbery, aggravated assault with a deadly weapon, and possession of a firearm during the commission of a felony. In a plea bargain, Kitchens pleaded guilty to the less serious charge of voluntary manslaughter and accepted a 10-year prison sentence in exchange for his testimony against Calvin and Delron

Glenn as the principal actors in Tanner's death. The Glenn brothers pleaded not guilty. Prior to trial, their attorneys filed a motion to prevent the State's witnesses – who did not witness the shooting – from identifying the defendants based on the video or photographic stills as the perpetrators. The motion cited Georgia Supreme Court and Court of Appeals decisions which stated that “a witness's familiarity with the defendant, in and of itself, does not make his or her identification testimony based on a video or photograph admissible.” Delron's attorney also filed a motion to suppress the search of his sister's apartment where Delron had been staying and where investigators seized and searched the LG cell phone without a warrant. The trial court denied his pre-trial motions.

Following a jury trial, Delron Glenn was convicted of all charges, and his older brother was convicted of all but the malice murder charge. Delron, who now appeals to the state Supreme Court, was sentenced to life in prison plus five years with the possibility of parole.

ARGUMENTS: Glenn's attorney argues the trial court erred by denying the motion to prevent witness identification testimony from video and photographs. In 2008, the Georgia Supreme Court ruled in *Dawson v. State* that, “It is improper to allow a witness to testify as to the identity of a person in a video or photograph when such opinion evidence tends only to establish a fact which average jurors could decide thinking for themselves and drawing their own conclusions.” “Accordingly, our appellate courts have held ‘such testimony should be admitted for the jury's consideration *only if* the witness is familiar with the defendant and the defendant's appearance changed prior to trial; or when the witness knows some distinctive but presently inaccessible characteristic of the defendant's appearance.” At trial, the defense position was that Delron and Calvin Glenn were not the ones who caused Tanner's death and that this was a case of mistaken identity. And the trial court erred in not granting the motion to exclude identification testimony from Kitchens and Johnson who did not witness the shooting. Georgia case law prohibiting lay witness identification from photo or video constitutes a “common law rule” that applies in post-2013 Georgia trials and that was not modified by the new Evidence Code. The erroneous admission of photo identification testimony from Kitchens and Johnson prejudiced the verdict against Delron, the attorney argues. The trial court also erred in denying Glenn's motion to suppress the LG cell phone and two other cell phones found at Delron's sister's apartment where he was staying at the time of his arrest. The magistrate judge who issued the search warrant had lacked probable cause. For one thing, the detective's affidavit does not show probable cause that Delron committed the murder, the attorney argues. The State also failed to establish a nexus between the items to be seized and the address of the sister's apartment. Even assuming there was a valid search warrant, the trial court erred in denying Delron Glenn's motion to suppress the warrantless seizure and subsequent independent search by the detective of the LG cell phone, the attorney argues. It was only *after* the detective seized the phone, then manipulated it by removing the battery, that the detective discovered the phone had belonged to Tanner. Finally, Delron's trial attorney rendered “ineffective assistance of counsel” by failing to redact from the video Kitchens' statement communicating his belief that Delron was affiliated with the “Bloods” street gang.

The State, represented by the District Attorney's and Attorney General's offices, argues the trial court properly denied Glenn's motion to exclude identification testimony from video and photographs. At trial, the witnesses all made in-court identifications of Delron Glenn. Johnson identified him as the man she'd dropped off at the motel the day of the shooting and that he was

the one in the still from the video taken of the incident. Kitchens identified Glenn as the man he saw holding the firearm both prior to and after the shooting. The trial court also properly denied Glenn's motion to suppress the evidence found at his sister's apartment as the search warrant was valid and supported by probable cause. At the time the officer took out the search warrant, Glenn had already been identified as a suspect through still shots of the video. While the officer did not know for certain that the LG phone was the one that had been stolen from Tanner, the state Supreme Court in the past has "authorized police to seize any stolen property which he has probable cause to believe was tangible evidence of the crime, even if not specifically set out in the warrant," the State argues. "The officer does not need to 'know the goods to be stolen property at the time they are seized. It is enough that he have probable cause to believe that this is the case.'" This particular phone was properly seized as it was in "plain view" in the apartment during the search. As to the mention of Glenn's possible gang affiliation, Glenn's attorney has failed to show that Glenn's trial counsel was ineffective or that his case was damaged by the mention, and the argument therefore lacks merit, the State contends.

Attorney for Appellant (Glenn): Matthew Winchester

Attorneys for Appellee (State): Sherry Boston, District Attorney, Harry Ruth, Dep. Chief Asst. D.A., Lenny Krick, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

2:00 P.M. Session

PATTON V. VANTERPOOL (S17A0767)

In another case involving in vitro fertilization and the legal rights of the parties, a man is appealing a **Chatham County** court ruling declaring him the legal father of his ex-wife's child, arguing he is not the biological father and never intended to consent to be a father.

FACTS: David Patton and Jocelyn Vanterpool married Aug. 29, 2010 and separated Aug. 13, 2013. He filed for divorce on Jan. 15, 2014, and the trial court granted it on Nov. 14, 2014. The court order and the parties' agreements stated there were no minor children and, according to Patton, none were expected. However, on Sept. 15, 2014, before the divorce was final, Vanterpool, a physician, claims that Patton provided her with written consent to undergo in vitro fertilization. He claims he signed the agreement under duress to get her to agree to proceed with the divorce. While the divorce was pending, Vanterpool went to the Czech Republic and received in vitro fertilization treatments using donor eggs and donor sperm. Patton did not participate or go with her. On June 6, 2015, Vanterpool gave birth to twins 29 weeks and one day after the couple's divorce was finalized. Only one of the babies survived. Vanterpool then filed a Motion to Set Aside the Final Judgment and Decree of Divorce, but the trial court denied that motion on Oct. 15, 2015. She then filed a claim to establish paternity, alleging that because Patton had signed an informed consent, Georgia Code § 19-7-21 forbid him from challenging the issue of paternity. The statute says: "All children born within wedlock or within the usual period of gestation thereafter who have been conceived by means of artificial insemination are irrebuttably presumed legitimate if both spouses have consented in writing to the use and administration of artificial insemination." (An "irrebuttable presumption" is an absolute presumption that can't be overcome by argument and is in effect a mandatory rule of law.)

Patton objected as the parties were divorced prior to the child's birth and even prior to conception. Vanterpool filed a motion asking the court to grant "summary judgment" on the issue of paternity. (A judge grants summary judgment after determining a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) The trial court ruled in her favor, and Patton now appeals to the Georgia Supreme Court, arguing the statute is unconstitutional.

ARGUMENTS: Patton's attorney argues this case presents a unique opportunity for the Supreme Court to address the language and meaning of Georgia Code § 19-7-21 and create future case law for this statute. "However, the Court does not have to reach the Constitutional issues of the statute in the present case because the Court can resolve this case by finding that the present case is inapplicable to § 19-7-21," the attorney argues in briefs. That is because the statute deals specifically with artificial insemination while this case deals with in vitro fertilization. The two are "completely different" medical procedures, the attorney argues, with artificial insemination defined as "the introduction of semen into part of the female reproductive tract by other than natural means." In vitro fertilization is defined as the "mixture usually in a laboratory dish of sperm with eggs which have been obtained from an ovary that is followed by introduction of one or more of the resulting fertilized eggs into a female's uterus." "Artificial insemination is not the same thing as in vitro fertilization and the words cannot be used interchangeably to mean the same thing," the attorney argues. Other states' courts, including the Supreme Court of Washington, have ruled that statutes regarding children conceived by artificial insemination do not apply to those conceived by in vitro fertilization. "Mr. Patton contends that the legislature should be the one to enact legislation deciding the rights of parties involved in the in vitro fertilization process," his attorney argues. Also in support of his position, a leading treatise in this state, "Redfearn Wills and Administration in Georgia," has pointed out that the Georgia Code recognizes artificial insemination but does not recognize in vitro fertilization. The treatise points out that the broad term is "assisted reproduction technologies." The statute is unconstitutional because it violates Patton's right to due process, which has as its core the opportunity to be heard in court. Vanterpool argues that the signed document prevents Patton from having his day in court to challenge paternity. "Because the statute prevents Mr. Patton from presenting evidence to the contrary, the statute cannot withstand strict judicial scrutiny as the issue affected is parental rights which is probably one of the most fundamental rights we have." The statute also is unconstitutional as it violates Patton's right to equal protection because it violates the right of a potential father to be treated the same as other potential fathers. The statute is also unconstitutionally vague and overbroad, Patton's attorney argues. The statute does not define artificial insemination and fails to clarify if it applies to donor sperm or donor eggs or both. This case involves both donor eggs and donor sperm. "Mr. Patton has no biological connection to Mrs. Vanterpool's child." Finally, the trial court erred in finding that Patton consented to becoming a father to Vanterpool's children, his attorney argues. She relies on a two-page document prepared by a clinic in the Czech Republic. "A thinly veiled document should not be enough to bind Mr. Patton to raising a child that he is not biologically connected with and to do so with a woman that he divorced prior to her even becoming pregnant," the attorney contends. The acceptable form for authorization and consent by husband and wife for *artificial insemination* specifically states that the parties "are still legally married, are living together, and are bound together in a legal state of matrimony." Also, the document he may have

signed “is not a valid consent form recognized by Georgia,” the attorney contends. She went all the way to the Czech Republic for the procedure because “she wanted to keep everyone in the dark” and because she knew that “no doctor in the United States would proceed with IVF treatments for her if she were going through a divorce case....” Patton is asking this Court to reverse the trial court’s ruling and give him his day in court to challenge the paternity.

Vanterpool’s attorneys argue the term “artificial insemination” as used in the statute § 19-7-21 includes in vitro fertilization. Both medical procedures are among methods of “assisted reproductive technology in which semen is used to make a woman or female animal pregnant without sexual intercourse,” they argue. Patton’s “reading of the statute is unnecessarily restrictive.” The statute was passed in 1964. “The Legislature did not contemplate the current scenario; nor could they have since the procedure did not exist.” Patton’s argument that the two procedures are so unlike each other that a separate statute is needed, “would require a new statute every time medical technology develops a new procedure for artificial reproduction, mandating that children born in the gap shall be bastards.” Only a minority of states have taken the approach that there should be separate statutes. But as the trial court pointed out, a number of other states that have dealt with this issue have held that artificial insemination includes in vitro fertilization. “The critical element of consent in cases of artificial insemination is consent to create a child,” the attorneys argue, quoting a Massachusetts Appeals Court ruling. “Thus, where a husband consents to an artificial insemination or IVF procedure, knowing that a child may result, [as Mr. Patton has done,] parental status should attach.” The statute § 19-7-21 does not violate Patton’s constitutional right to due process. “Once paternity is established, either by a valid informed consent or a DNA test, an individualized hearing as to whether the man agrees to be responsible for his parentage is contradictory to well-settled policy favoring the establishment of paternity,” Vanterpool’s attorneys argue. The statute also does not violate Patton’s right to equal protection. Under another statute, § 19-7-20, a child born through sexual intercourse is presumed legitimate. This presumption may be overcome by clear proof to the contrary through genetic testing. Under § 19-7-21, the only protection to children born through artificial insemination using donor sperm is informed consent. “An irrebuttable presumption is thus required in this statutory scheme or a child created by donor sperm would forever lose the opportunity to establish paternity if the parent who validly consents in writing is later allowed to renege on his decision to be a parent and to create life.” The statute § 19-7-21 also is neither vague nor overbroad, the attorneys argue. The legislature’s intent in passing the legislation was to establish legitimation for children born by any means of artificial reproduction techniques. Finally, Patton failed to challenge the issue of his consent at the trial court level. He therefore may not bring it up for the first time on appeal. He acknowledged that his signature is on the Informed Consent, her attorneys argue. “Mr. Patton has failed to present any evidence that he did not consent to be the father of these children,” the attorneys conclude. “Mr. Patton has changed his mind. He has decided he no longer wants to be saddled by the responsibility of parenthood and seeks a ruling from this Court that would create a class of bastard children in Georgia. The law does not allow the biological father of a child born as a result of a one night stand, where logic and reason are blinded by lust, to opt out of the responsibilities created if a child results from that single, brief encounter. This would go against long settled public policy favoring the establishment of paternity.” Here, Patton argues “that he should be treated differently than biological fathers and be allowed to avoid the responsibilities for the life he created with his consent. He wants a mulligan.”

Attorney for Appellant (Patton): Richard Sanders, Jr.

Attorneys for Appellee (Vanterpool): David Purvis, Michael Manely

MALLORY V. THE STATE (S17A0819)

A young man convicted of murder for his role in the stomping and beating death of a 19-year-old is asking the Georgia Supreme Court to reverse his conviction and order a new trial.

FACTS: On Nov. 6, 2010, the parents of Alexis and Ariana Thompson hosted a party for their daughters at their home on Independence Drive in **Douglas County**. Each daughter was permitted to invite six friends to the party that was to be a celebration of the girls' good grades at school. Among those invited was Bobby Tillman, 19, a recent graduate of Chapel Hill High school. The party started out relatively tame, with dancing and no drugs or drinking. But news about the party spread on social media and eventually, more than 100 uninvited people showed up. Among them were **Quantez Mallory**, 18, and his friends, Horace Coleman, Emmanuel Boykins, and Tracen Franklin. As the party grew out of control, the parents shut it down, called police, and many of the partygoers spilled into the front yard and onto the street. A fight broke out among some of the girls who had crashed the party. As people congregated to watch the fight, Tillman, who had not been involved in any of the verbal or physical altercations, stood passively across the street next to a parked car. At one point, Boykins tried to break up the fight and was himself hit. Witnesses heard him say he wasn't about to hit a female in retaliation, "but the next n----- I see, I'm going to swing on him."

According to State prosecutors, Boykins then headed toward Tillman and began hitting him. Mallory, Coleman and Franklin joined in, punching and kicking the downed Tillman. "They just kept kicking him and kept kicking him," one witness said. As Tillman lay on the ground, the four stomped on him more than 10 times. After they finally stopped, Tillman lay on the ground foaming at the mouth. When deputies from the Douglas County Sheriff's Office arrived, they blocked the roadway with their vehicles to prevent people from leaving the scene. They found Tillman lying unconscious in the grass but still alive with a weak pulse and gasping for air. Law enforcement and paramedics performed CPR, but Tillman never regained consciousness. He was transported to the hospital but pronounced dead shortly after arrival. Meanwhile, law enforcement officers transported by bus 57 partygoers to the sheriff's office for interviews. Several witnesses identified Mallory, Coleman, Boykins and Franklin as Tillman's attackers, based on their clothing and their hair styles. Mallory was identified by his white jacket with red stripes on the sleeves and his distinctive haircut. The four were jointly indicted for malice murder and felony murder for the death of Bobby Tillman.

In 2012, Boykins pleaded guilty and was sentenced to life in prison with the possibility of parole. The same year, Franklin was tried, convicted of murder and sentenced to life without the possibility of parole. At a joint trial in January 2013, Mallory and Coleman were both found guilty of malice murder. Each was sentenced to life without parole, and Mallory now appeals to the Georgia Supreme Court. (Coleman is scheduled to argue his appeal before the Supreme Court one day before Mallory, on April 17, 2017.)

ARGUMENTS: Mallory's attorney argues the trial court erred by rejecting his challenge against State prosecutors for using six of their nine "peremptory" strikes during jury selection against African Americans, leaving only two blacks on the jury and one as an alternate. (Peremptory strikes do not need to be supported by a reason.) Mallory's attorney made the

challenge pursuant to the U.S. Supreme Court's 1986 decision in *Batson v. Kentucky*, which established a three-step process for ferreting out racial discrimination in jury selection. First, the party objecting to the strike must establish a "prima facie" case of purposeful racial discrimination. (A prima facie case is one in which there is enough evidence for the judge to rule in the party's favor). Next, the proponent of the strike (here State prosecutors) must offer a race-neutral explanation for the strike – a reason for striking the person other than race. And finally, the party objecting to the strike must then show that the real reason for the strike was the rejected juror's race. Here, the trial court erred by rejecting Mallory's *Batson* challenge of the six jurors "without expressly considering whether he had shown at least one instance of purposeful discrimination," the attorney argues in briefs. "The trial judge doubted that counsel had established a prima facie case of discrimination, but he required the prosecutor to articulate racially neutral explanations for each strike," Mallory's attorney says. "Regrettably, the court's analysis of each ended with a finding that the proffered explanations were in fact race-neutral. Absent from the court's rulings was a determination whether, based on the totality of the evidence, the defense had shown purposeful discrimination – the third, mandatory step of the *Batson* inquiry." As a result of passing time and the court's treatment of the issue, a remand would be insufficient to vindicate Mallory's rights under the Equal Protection Clause of the Constitution and a new trial must be ordered, the attorney contends. In addition, the trial court violated Mallory's constitutional rights by refusing to give Mallory access to prospective jurors' GCIC (Georgia Crime Information Center) records. The State, which had access to the records, used them to provide a supposed race-neutral reason – dishonesty – to strike one of the six challenged jurors. Mallory's trial attorney objected that Mallory had no access to the GCIC records of prospective jurors, arguing the defense was put at an unfair disadvantage in evaluating the State's reasons for striking the black jurors. Finally, the trial judge's "highly active questioning of the medical examiner operated as a comment on the evidence," which is not allowed under the law and requires reversal of Mallory's conviction. The trial court's extensive questioning "tended to highlight the suffering of the deceased to Mr. Mallory's prejudice," the attorney contends.

The State, represented by the District Attorney's and Attorney General's offices, argues the trial court did not err in ruling that prosecutors did not use their peremptory strikes in a discriminatory manner. A total of 35 prospective jurors were considered. About 26 percent of the panel of prospective jurors were African Americans; about 21 percent of those eventually seated were African American. The judge ruled that Mallory failed to make a prima facie case of discrimination but nevertheless required the State to put on the record its race-neutral reasons for striking the jurors. Mallory's attorney claimed, however, that the trial court failed to do the third part of the *Batson* test, in which the court must decide whether the opponent of the strike has proven discriminatory intent. That "is simply inaccurate," the State contends. "Although the trial court did not make an explicit finding on the record at trial that the State had not acted with discriminatory intent as to each of the six jurors, the trial court did conclude that the State had given a race-neutral reason for striking jurors. In so doing, the trial court implicitly weighed the credibility of the State's explanations for each strike in conjunction with Appellant's [i.e. Mallory's] responses as to why the explanations were *not* race-neutral and found Appellant's claim of discriminatory intent to be lacking." The trial court appropriately denied Mallory access to prospective jurors' GCIC records, because state law denies private citizens from having access

to the personal records. Mallory has failed to show that he is entitled to a new trial on this issue, the State argues. Finally, the trial judge's questioning of the forensic pathologist did not violate Georgia law, the State contends, as the judge never expressed an opinion or commented on the evidence. "It has long been part of Georgia jurisprudence that a trial judge may propound questions to any witness for the purpose of developing fully the truth of the case, and the extent of such an examination is a matter for the trial court's discretion." The judge did not make an improper comment on the evidence, rather the judge questioned the pathologist to clarify the level of force that caused the fatal injuries. "The trial court's nine questions of Dr. Eisenstat focused on the cause and manner of Bobby's physical injuries and in no way intimated any opinion as to Appellant's guilt in the murder," the State contends.

Attorney for Appellant (Mallory): Stephen Scarborough

Attorneys for Appellee (State): Brian Fortner, District Attorney, Emily Richardson, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Aimee Sobhani, Asst. A.G.

BATTLE V. THE STATE (S17A0741)

A young man is appealing his murder conviction and sentence to life in prison without the possibility of parole for his role – at the age of about 18 – in the shooting death of the son of a woman who worked in the **Fulton County** District Attorney's office.

FACTS: On the night of Sept. 7, 2012, a group of six young men were hanging out at 468 Erin Ave. in the Mechanicsville neighborhood of Atlanta, smoking marijuana. Suddenly, four or five men with shirts over their faces ran up, their guns drawn, and said, "Don't nobody reach for a pistol," "Put your hands up," and "Y'all know what it is," indicating a robbery. Kyle Pope, one of the victims, later testified, "So when everybody put their hands up, they just started shooting, out of nowhere, everybody, just gunshots." Pope and most of the others took off running as the gunmen fired about 20 shots. Jermain Finch, with his hands still up, was shot in the hand and tried to run before he was shot in the back and collapsed; he survived. Walt Williams was shot in the buttocks, but he kept running. Kenneth "Little Kenny" Roberts also was shot in his hand and thigh, but he was later found lying on the ground in the backyard, dead from two gunshots to his back. A passerby, James Colvin, later testified that he heard gunshots as he and his 8-year-old son got off a nearby bus. He saw two gunmen running away from the house and a third man limping behind them and carrying a pistol. All had white shirts tied around their heads and got into a white Jetta car, which left the scene. Earlier that day, Adrieonna Jumper was driving her boyfriend, Jacobey Carter, around in Mechanicsville in a white Hyundai Sonata her cousin had rented for her from Enterprise. At one point, Carter got out of the car to speak with a group of people gathered at the Big Four store where, according to state prosecutors, the gang, "Jack City," often congregated. According to the State, the group was planning a robbery, and when Carter returned to Jumper's car, he asked her to transport them to 468 Erin Ave. She later said she did not know why they were going there, and once they arrived, she remained in the car. She said she did not see guns. While Jumper knew some of the men by name, she later identified one whose name she didn't know as "the guy with dreadlocks." Shortly after they got out of the car, Jumper said she heard gunshots, and Robert Harris and the "man with the dreadlocks" returned to the car. Harris had been shot and got into the car, while the other man did not. Jumper then drove to Grady hospital where she and Carter dropped Harris off before fleeing.

Detective Kevin Leonpacher investigated the shooting. He got a tip that Jacobey Carter was tied to the investigation, and he was able to track down Jumper and Carter and impound the rental car, which had blood stains in the back seat that matched Harris's. Carter and Jumper told Leonpacher that on the night of the shooting, Harris had flagged them down while they were on their way to purchase marijuana. The detective was contacted by a task force in the Atlanta Police Department suggested he interview Nathaniel Howard. According to the State, Howard said he'd talked to Battle at a neighborhood club just after the shooting. Battle told him he had gotten into a shootout, that one guy was running, and that Battle had shot him in the back and thought he had killed him. Howard said he had seen Battle earlier that day with a revolver. Battle also told Howard he was worried he'd dropped his cell phone at the scene. Through his investigation, Leonpacher determined that Carter and Harris put themselves at the scene, that Battle's cell phone was at the scene, that Jumper put Battle and his co-defendants, Carter and Harris, at the scene, and that Howard identified all three in relation to the shooting. Marcus Battle was jointly indicted with Jacobey Carter and Robert Harris for the malice murder of Kenneth Roberts and a number of other charges. Following a joint trial in September 2014, Battle was convicted of all charges and sentenced to life without parole. He now appeals to the Georgia Supreme Court.

ARGUMENTS: Battle's attorney for his appeal argues that Battle's trial attorney rendered "ineffective assistance of counsel" in violation of his constitutional rights. The trial attorney failed to object Carter's statements as they were described by Detective Leonpacher. Carter did not testify at the trial, but Leonpacher testified about his interview of Carter. The detective testified that although he could not recall the name that Carter used to refer to Battle, Carter had directly implicated Battle in the shooting. The detective's testimony about his interview with Carter put Battle at the scene. "But I can't remember how he referred to Mr. Battle, but he described him as being a guy with dreadlocks." Because Carter did not testify, his statements clearly violated Battle's constitutional right to confront witnesses who testify against him. Under the U.S. Supreme Court's 1968 decision in *Bruton v. United States*, incriminating statements by a co-defendant who cannot be confronted and cross-examined are inadmissible. Carter's statements are also inadmissible under *Bruton* because they implicated Battle's criminal participation. "Battle suffered prejudice from his trial counsel's inexplicable failure to raise a *Bruton* objection, and it cannot be said that the *Bruton* violation was harmless beyond a reasonable doubt," the attorney argues. "There is no solid identification of Battle as one of the assailants. Jumper's identification is dubious given her initial inability to identify the man with dreads, her admission that she didn't look... at the man when he got in and out of the vehicle, and her initial denial at trial that she could identify the man with dreads." Howard's testimony against Battle "also is dubious because it was admittedly motivated by a desire to secure a reduced sentence, which in fact, unbeknownst to the jury, he had already received." Under the deal, Howard received at least a two-year sentence reduction for his testimony against Battle. The State violated its duty by failing to disclose at the time of the trial the deal regarding Howard's federal sentence. Finally, District Attorney Paul Howard, Jr. should have disqualified himself and his office because the murder victim was the son of one of his long-time employees. "The District Attorney has a personal interest in this case that creates the appearance of impropriety and a conflict of interest," Battle's attorney argues.

The State, represented by the District Attorney's and Attorney General's offices, argues that Battle's trial attorney was not ineffective for failing to object to his co-defendant Carter's statements as a violation of Battle's constitutional right to confront witnesses against him. The trial court properly found that Carter's statements did not directly inculcate Battle. Battle's trial attorney had been lead counsel in almost 200 cases before he represented Battle, and about 65 murder trials. Also, Battle has failed to show that his case was damaged by his trial attorney's purported failure to object. And he has not shown a reasonable probability that the result of his trial would have been different had his trial attorney objected. "If a statement that is admitted in violation of *Bruton* is merely cumulative of other properly presented evidence which would allow a jury to find overwhelming evidence of guilt, then any *Bruton* error is harmless," the State contends. "There was ample evidence that Appellant [i.e. Battle] committed the crimes of which he was convicted." As to whether the State failed to disclose a witness's plea deal Battle's attorney did not raise the issue at the earliest possible time, and it may not be raised for the first time when the case is on appeal. Furthermore, the argument has no merit, the State contends. Battle has not shown that there was a "deal" between the State and federal prosecutors involving Nathaniel Howard. "There is nothing in the record of any plea deal that Howard did obtain." Finally, the argument that the District Attorney should have disqualified himself also lacks merit. District Attorney Howard "has recused himself from other cases when there was a conflict of interest and recusal was mandated," the State argues. And while he attended the funeral of Kenneth Roberts, Mr. Howard has attended the funerals of victims in other homicide cases that he had prosecuted as well."

Attorney for Appellant (Battle): Patrick Hannon

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Arthur Walton, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.