



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

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Monday, September 18, 2017

10:00 A.M. Session

THE STATE V. HUDSON (S17G0739)

The State is appealing a Georgia Court of Appeals decision that upholds a **Fulton County** Court's modification of a juvenile's sentence by shortening the amount of time he will spend in prison.

FACTS: According to prosecutors for the State, in January 2015, Timothy Martez Hudson and two accomplices robbed Antonio Dubos of his vehicle, wallet and cellular telephone by threatening Dubos with a handgun. During the robbery, Hudson brandished the gun and was the driver of the vehicle as they left the scene. They then fled from officers in Dubos's vehicle. Hudson and the other two were formally charged with armed robbery. Hudson was 16 years old when he entered into a negotiated plea to armed robbery with a firearm, aggravated assault, and obstruction of a law enforcement officer. He was sentenced to 10 years with five to serve in prison on the armed robbery count, five years to serve on the aggravated assault count, and 12 months to serve on the obstruction count. Each of these sentences was to be served concurrently. Hudson was prosecuted as an adult in the superior court and was sentenced to "confinement in such institution as the Commissioner of the Department of Corrections may direct" under Georgia Code § 17-10-14 (a). Because he was 16 and still a juvenile, he was committed by the Department of Corrections to the Department of Juvenile Justice and housed in a juvenile

detention facility. Under that statute, “such person shall be committed to the Department of Juvenile Justice to serve such sentence in a detention center of such department until such person is 17 years of age at which time such person shall be transferred to the Department of Corrections to serve the remainder of the sentence.” Another statute, Georgia Code § 49-4A-9 also applies to any “child who has previously been adjudged to have committed an act which is a felony if tried in a superior court and who, on a second or subsequent occasion is convicted of a felony in a superior court....” In subsection (e), this statute says that, “When such a child sentenced in the superior court is approaching his or her 17th birthday, the department shall notify the court that a further disposition of the child is necessary....The court shall review the case and determine if the child, upon becoming 17 years of age, should be placed on probation, have his or her sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authorized by law.”

As Hudson’s 17th birthday approached, the superior court held a hearing under § 49-4A-9 (e) to review Hudson’s commitment order at the request of the Department of Juvenile Justice. After hearing testimony about Hudson’s good behavior and good grades at the youth prison where he was being kept, the judge – citing § 49-4A-9 (e) – issued an order to release Hudson from custody and allow him to serve the remainder of his sentence on probation. State prosecutors appealed to the Court of Appeals, arguing that the superior court was not authorized to probate the remainder of Hudson’s sentence. But in a 6-to-3 decision, the majority of the appellate court disagreed, upholding the superior court’s ruling. The court majority noted at the outset that “there is little if any case law interpreting precisely how the applicable statutes govern this scenario.” (Case law is law that is established by court decisions instead of by legislative actions.) The State now appeals to the Georgia Supreme, which has agreed to review the case to determine whether the Court of Appeals erred in holding that the superior court may modify a juvenile’s sentence based on § 49-4A-9 (e) when the same juvenile was convicted of a felony and sentenced as an adult based on § 17-10-14 (a).

ARGUMENTS: The State, represented by the District Attorney’s office, argues the Court of Appeals erred. “When a juvenile is convicted of a felony in a superior court and sentenced as an adult, Georgia Code § 17-10-14 (a) requires that upon turning 17 years of age he or she ‘shall be transferred to the Department of Corrections to serve the remainder of the sentence,’” the State argues in briefs. The superior court has “exclusive original jurisdiction over the trial of any child 13 to 17 years of age who is alleged to have committed” certain specified offenses. “Relevant here, armed robbery is such an offense.” The Court of Appeals has misinterpreted § 49-4A-9 (e) “to authorize a superior court to modify the sentence of any person it has sentenced who is committed to the custody of the Department of Juvenile Justice as they approach their 17th birthday, and to place any such person on probation.” This is error, because the “ability to modify a sentence under § 49-4A-9 (e) does not extend to persons younger than 17 years of age who are sentenced by a superior court into the custody of the Department of Corrections but committed only temporarily to the Department of Juvenile Justice.” As the dissent in the Court of Appeals decision said, “Georgia Code § 17-10-14 (a) controls the detention directives of persons younger than 17 years of age who are convicted of felonies in superior court,” the State argues.

Hudson’s attorney argues the Court of Appeals ruled correctly. First, the plain language of the statutes “lays a clear path for children younger than 17 convicted of felonies in

superior court. If sentenced to imprisonment, those children are committed first to Department of Juvenile Justice custody (§ 17-10-14 (a)). Then, just ahead of their 17th birthdays, the Department of Juvenile Justice must return those children to the sentencing court, which ‘determines’ what path the sentence will take once the child turns 17 (§ 49-4A-9 (e)). Although § 17-10-14 (a) presumes an unbroken road from courtroom to Department of Juvenile Justice commitment to Department of Corrections custody, the later-enacted provision, § 49-4A-9 (e), allows a superior court to steer children in other directions, like probation,” Hudson’s attorney argues. Second, neither prosecutors nor the dissent in the Court of Appeals decision offers an argument that is “sufficiently enticing to lure an interpretation from the route that the General Assembly has mapped.” Finally, because both statutes are penal statutes, the Georgia Supreme Court “must resolve any lingering ambiguities in favor of the accused,” according to the high court’s 1988 ruling in *Bankston v. State* and its 2013 ruling in *McNair v. State*. “So even if this Court were to find that two interpretive roads diverge, it should take the one that benefits Hudson,” the attorney argues. “That would be the road that permits the superior court to have modified Hudson’s sentence as it did.”

Attorneys for Appellant (State): Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Kevin Armstrong, Sr. Asst. D.A.

Attorney for Appellee (Hudson): Brandon Bullard

WHITE V. THE STATE (S17A1588)

A man is appealing his murder conviction and life prison sentence for shooting a man in the back and killing him following an argument.

FACTS: In the early morning hours of Aug. 16, 2003, **Tracy Bernard White** was hanging out with his friends, Larry “Pumpkin” Miller and Bryant Daniel in the Lincoln Park area of **Upson County**. At some point while the three were joking around, White made a comment about a girl, and Miller and Daniel jumped on him. White, who suffered a busted lip, was angry and told a number of people throughout the night about the fight, saying he was going to “get them.”

Later that day, at around noon, White went to confront Miller who was sitting on his uncle’s porch. White stopped at the edge of the roadway in front of Miller, who told White to “go on and stop playing.” According to state prosecutors, White then reached into his pocket and pulled out a small caliber handgun. According to White, Miller jumped off the porch and told White he intended to finish him off. White said Miller reached into his pants as if reaching for a weapon. He said he was frightened and drew his .22 pistol in self-defense. But the State said that as White approached him, Miller jumped up and started running away. As he ran around his uncle’s car and down the road, White raised his gun and fired a single shot into Miller’s back. Miller collapsed in the street. Paramedics arrived on the scene and transported Miller, who had no pulse, to Upson Regional Medical Center where he was pronounced dead at 12:55 p.m. According to witnesses, as White left the scene, he was heard saying, “I told y’all I was going to get y’all one by one.”

Following a March 2004 trial, the jury found White guilty of malice murder, felony murder based on aggravated assault, and possession of a firearm during the commission of a crime. He was sentenced to life plus five years in prison. White now appeals to the state Supreme Court.

ARGUMENTS: White’s attorney argues he was deprived of his right to a fair trial due to the unconstitutional jury charge in which the judge instructed jurors that they must find White guilty beyond a reasonable doubt, but defined reasonable doubt as not “meaning the possibility that the defendant may be innocent.” In 1999, the Georgia Supreme Court “emphatically” disapproved of the exact same language in its decision in *Coleman v. State*, the attorney argues in briefs. The language was not found in the pattern jury instructions for criminal cases, and “few, if any, circumstances would justify a trial court’s failure to use the suggested pattern criminal charges compiled by the Council of Superior Court Judges of Georgia,” the *Coleman* decision said, warning that “continued use of the disapproved charge in disregard of this opinion may result in the reversal of future convictions.” Ten years later, in *Anderson v. State*, this Court warned that, “Any time extraneous statements are added to the pattern charge on a concept as fundamental as reasonable doubt, trial courts run the risk of sabotaging the entire trial. The risk is particularly acute where the charge on reasonable doubt is involved, given that error therein may be deemed structural error requiring automatic reversal.” White wants this court to enforce *Coleman*. In addition, “White was deprived of his constitutional right to be present at trial when the court refused to take necessary remedial action with respect to poor acoustic conditions in the courtroom,” his attorney argues. A criminal defendant has the “right to be *present*, and see and hear, *all the proceedings* which are had against him on the trial before the Court,” the attorney argues, quoting the Georgia Supreme Court’s 1998 ruling in *Hanifa v. State*. Here, the acoustics were so poor in the courtroom that the trial transcript reveals more than 60 instances in which someone asked witnesses to speak up or complained they could not hear. The judge permitted White’s attorney to move to a better place in the courtroom, but would not allow White to move with her, “thereby depriving White of his constitutional right to hear the proceedings against him,” White’s attorney argues.

The State, represented by the District Attorney’s and Attorney General’s offices, argues that the trial court’s jury instruction on reasonable doubt is not reversible error. In *Coleman*, the high court disapproved of the language at issue only if the defendant “can show that there is a reasonable likelihood that the jury applied a less stringent standard of proof” than that required by law. “After reviewing the charge as a whole, White has shown no proof that there is a reasonable likelihood that the jury applied a standard of proof less stringent than that required by law,” the State argues. As to the argument that White was deprived of his right to be “present” at trial because of the poor acoustics, the State contends that White failed to preserve the issue for review by the Supreme Court. When the trial judge refused to allow White to move with his attorney to a better location for hearing, the attorney did not object or make subsequent requests for remedial action. Even if this Court determines that this error is preserved for review, White “has not met his burden to show that he in fact could not hear the proceedings,” the State argues. Although White points to more than 60 instances when someone complained they could not hear or asked witnesses to speak up, only one of those was a “request on White’s behalf when his trial counsel was about to give her opening statement,” the State contends.

Attorney for Appellant (White): Ivars Lacis

Attorneys for Appellee (State): Benjamin Coker, District Attorney, B. Ashton Fallin, Asst. D.A., Christopher Carr, Attorney General, Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.

ANTHONY V. THE STATE (S17A1722)

STROZIER V. THE STATE (S17A1724)

Two young men who the State says are members of a street gang operating in **Cobb County** are appealing their murder convictions and life prison sentences for their role in beating and killing a young man witnesses said was flashing rival gang signs at them.

FACTS: On June 30, 2013, **Johnathan Donald Anthony, Jekari Oshay Strozier, Kemonta DeAndre Bonds, and Antonio Shantwan Pass** were at a Chevron gas station on Mableton Parkway in Cobb County. The young men were wearing mostly red. Also at the Chevron was a man named Joshua Chellew, who arrived in a truck driven by Alexis Flowers. According to the State, Anthony, Strozier, Pass and Bonds were members of the street gang, “Re Up,” which operates in Austell and Mableton. The young men maintained that Re Up was a music group. According to later testimony by Cobb County Police Department’s Anti-Gang Enforcement Unit, the name “Re Up” refers in the narcotics business to a seller who has run out of drugs and needs a fresh supply. The gang expert said the Cobb County gang was a spin-off from the “Two Times” gang and had a short history and very young members. He believed it had been formed at Pebblebrook High School in July 2012 and had red as its color. He said Re Up members had been associated with such crimes as robbery, motor vehicle theft and drug offenses. On June 30, Chellew came out of the store at the Chevron wearing a backwards blue hat. According to witnesses, Chellew began waving a blue bandana in front of Anthony and the others, “started throwing up gang signs,” and mentioned something about “Crip life.” According to the State, the color blue and the gang signs made by Chellew were both associated with the Crip gang. Words were exchanged, and the men began cornering Chellew, then hitting him. Chellew tried to get away, but the men pushed the fight from the gas station onto Mableton Parkway. Anthony and Strozier, along with Pass, continued to kick and punch Chellew until he lay unconscious on the road. They then ran back to the gas station, split up between two cars and drove away, leaving Chellew in the middle of the road. Within a few moments, a car struck the unconscious Chellew, and he was killed. The driver never saw the victim lying in the road and had no connection to the crime.

Flowers, who had driven Chellew to the Chevron, testified at trial and identified the men who had beaten Chellew and left him unconscious. All four denied being part of a street gang. Anthony, Pass and Bonds all claimed that they had tried to stop the fight from happening. Strozier admitted attacking Chellew but said that Chellew’s death was caused by being struck accidentally by a car. Each of the four was charged with malice murder, six counts of felony murder, two counts of aggravated assault, and four counts of violating the Street Gang Terrorism and Prevention Act. Following a joint trial, Anthony and Strozier, who are the subjects of this appeal, were each found guilty of voluntary manslaughter as a related but less serious offense than malice murder. But the jury also found them guilty of felony murder and all other charges. (Pass was found guilty of voluntary manslaughter plus a number of other charges; Bonds was found guilty on all counts.) Anthony and Strozier were both sentenced to life plus 45 years in prison and now appeal to the Georgia Supreme Court.

ARGUMENTS (Anthony v. The State): Anthony’s attorney lists 13 errors he says were committed by the trial judge or Anthony’s attorney during the trial, in violation of Anthony’s constitutional right to effective counsel. Among them, he argues that because voluntary manslaughter is a less serious offense than felony murder, his felony murder convictions should

have been merged into his voluntary manslaughter conviction for sentencing purposes. Voluntary manslaughter has a maximum sentence of 20 years while murder has a *minimum* sentence of life in prison with the possibility of parole. In other errors, the trial judge improperly commented on the evidence and the credibility of witnesses during the prosecutor's opening statement, and she erred when she permitted the State to introduce evidence that Anthony had been involved in prior criminal acts. The State gave no proof that any of the alleged incidents was related to gang activity and they should not have been admitted as evidence. Finally, Anthony's trial attorney was ineffective in a number of ways, including for not objecting and asking for a mistrial when a witness stated that Anthony said, "I hate white people." (Anthony and his co-defendants were black; Chellew, the victim, was white.)

The State, represented by the District Attorney's and Attorney General's offices, argues the trial court properly sentenced Anthony for felony murder. No merger was required, the State contends. The jury found him guilty of voluntary manslaughter for causing Chellew's death by striking Chellew with his hands and feet, thereby incapacitating him in a roadway. The trial judge also ruled that regarding the felony murder count that was "predicated," or based on, violation of the Gang Act, that violation was an independent crime and not "part of the killing." That is different from the felony murder counts that were predicated on aggravated assault and aggravated battery, which were "an integral part of the killing." The State argues the trial court did not improperly comment on the evidence during the prosecutor's opening statement and properly admitted evidence of prior crimes related to gang activity. The State also contends that Anthony's trial attorney was effective in response to Anthony's numerous allegations of ineffectiveness.

ARGUMENTS (Strozier v. The State): Strozier's attorney argues that due to at least seven errors made during his trial, Strozier's convictions for murder and violation of the Gang Act should be reversed and he should be given a new trial. Or, as an alternative, these convictions should be thrown out for sentencing purposes and Strozier should be resentenced just for voluntary manslaughter and a single count of violating the Gang Act. Strozier makes similar arguments to Anthony, saying the trial court erred in admitting as evidence prior convictions for such crimes as misdemeanor battery, criminal trespass and obstructing an officer, and disorderly conduct because none of them qualified as criminal gang activity and should not have been admitted. Also, his four felony murder convictions must by law merge into the less serious voluntary manslaughter conviction and Strozier should be resentenced for that instead of murder. Moreover, the trial judge erred by failing to instruct the jury about the law regarding intervening causes of death.

The State responds similarly to some of Strozier's arguments as it did to Anthony's: Strozier was properly sentenced for felony murder and the trial court properly admitted evidence of Strozier's prior crimes as evidence of gang activity. In addition, the trial judge did not give an incomplete charge on the issue of causation, as Strozier claimed. Although the judge's instructions did not include the term, "intervening cause," they properly instructed the jury that it must find beyond a reasonable doubt that Chellew's death was a probable consequence of Strozier's actions, the State argues.

Attorneys for Appellants (Anthony, Strozier): Michael Saul, W. Carter Clayton

Attorneys for Appellee (State): D. Victor Reynolds, District Attorney, Michael Carlson, Dep. Chief Asst. D.A., John Melvin, Chief Asst. D.A., John Edwards, Sr. Asst. D.A., Christopher

Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Vanessa Meyerhoefer, Asst. A.G.