



## 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, November 13, 2017**

### 10:00 A.M. Session

#### **HINES V. THE STATE (S17G0024)**

A man is appealing his armed robbery conviction in **Fulton County**, arguing that his trial attorney was incompetent and ineffective, in violation of his constitutional rights, for failing to challenge an indictment that was “fatally flawed.”

**FACTS:** According to the evidence at trial, on Sept. 10, 2013, **George Hines** entered AutoZone, an automotive parts store in Atlanta, grabbed money from a cash register with the use of what appeared to be a firearm, and fled. Hines was arrested a short time later in possession of money and a pellet gun that had the appearance of an actual firearm. A Fulton County grand jury charged Hines with armed robbery and false imprisonment.

Under Georgia Code § 16-8-41, “A person commits the offense of armed robbery when, with intent to commit theft, he or she takes property of another from the person or the immediate presence of another by use of an offensive weapon, or any replica, article, or device having the appearance of such weapon.” The indictment formally charging Hines with armed robbery partially tracked the language of the statute, stating that Hines “did unlawfully, with the intent to commit theft, take from the person and immediate presence of [the cashier] U.S. currency, the property of AutoZone, by use of a replica or device – contrary to the laws of [the State of

Georgia], the good order, peace and dignity thereof.” However, the indictment omitted any description of the replica or device having the appearance of an offensive weapon.

Following a jury trial, Hines was convicted of both charges and sentenced to 10 years in prison for armed robbery followed by two years of probation for false imprisonment. Hines appealed to the Court of Appeals, which upheld the convictions. Hines then appealed to the Georgia Supreme Court, which agreed to review the case, asking the parties to address whether the Court of Appeals erred in ruling that the trial attorney did not render “ineffective assistance of counsel” for failing to challenge the indictment regarding the armed robbery charge.

**ARGUMENTS:** Hines’ attorney argues that by failing to allege that the pellet gun had the appearance of a firearm, the indictment failed to allege an essential element of the crime of armed robbery and was fatally flawed. “No type of weapon or replica was identified,” the attorney argues in briefs,” and the indictment actually failed to allege a criminal offense of any kind. Therefore, the trial attorney rendered ineffective assistance of counsel by failing to challenge the indictment regarding armed robbery. To prevail on a claim of ineffective assistance, a person must show both that his attorney’s performance was deficient, and that had it not been for the deficient performance, there is a reasonable probability that the outcome of his trial would have been more favorable to him. Hines’ attorney argued that his attorney’s failure to challenge the flawed indictment meant that Hines ultimately was convicted and sentenced based on a void indictment. And such a conviction cannot stand. The Court of Appeals was wrong to conclude that by referencing the Georgia Code section in the indictment, Hines could determine that the acts alleged to be criminal in nature included the use of a replica or device having the appearance of an offensive weapon.

The State, represented by the District Attorney, argues that the Court of Appeals did in fact err in relying on the Georgia Code statute to uphold the armed robbery count. “Due process of law requires that the indictment on which a defendant is convicted contain all the essential elements of the crime,” the State argues, quoting the Georgia Supreme Court’s 2010 ruling in *Lizana v. State*. The Court of Appeals ruled that the indictment would have withstood a general challenge because “by reciting the armed robbery Code section, the indictment ‘incorporated the terms of the applicable Code section that [Hines] was charged with having violated.’” Therefore, the appellate court reasoned, the trial attorney was not deficient for failing to file a challenge. But the Court of Appeals was wrong, the State contends, under the state Supreme Court’s May 2017 decision in *Jackson v. State*. Under *Jackson*, to withstand a general challenge, the indictment must: “1) recite the language of the statute that sets out all the elements of the offense charged, or 2) allege the facts necessary to establish violation of a criminal statute,” the State argues in briefs. “If either of these requisites is met, then the accused cannot admit the allegations of the indictment and yet be not guilty of the crime charged.” The Court of Appeals’ decision cannot be upheld based on the reasoning it used, the State contends. However, the Court of Appeals was correct that Hines failed to show the second requirement when claiming ineffective assistance of counsel – that had it not been for his attorney’s incompetence, the outcome of his trial would have been different. That is because nothing prevents the State from coming up with a new corrected indictment, and “trying Hines again on a perfect indictment.” As long as a defendant has not been found not guilty, or there is not a finding that the evidence did not support the verdict, double jeopardy does not bar a retrial, the State contends.

**Attorney for Appellant (Hines):** Steven Phillips, Office of the Public Defender  
**Attorneys for Appellee (State):** Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Marc Mallon, Sr. Asst. D.A.

**CITY OF UNION POINT ET AL. V. GREENE COUNTY (S17A1878)**  
**GREENE COUNTY V. CITY OF UNION POINT ET AL. (S17X1879)**

These appeals stem from a dispute between the **City of Union Point** and **Greene County** over the costs of the shared emergency 911 system.

**FACTS:** In October 2015, the City first sued the County after it claims the County threatened to terminate the dispatch of 911 calls to Union Point police using the County’s radio system. The County claims it never threatened to terminate the dispatch of 911 calls but merely wanted the City to make payments, as other cities did, to help support County personnel in continuing to provide services to the City.

Historically, Greene County has used its 911 dispatch center to dispatch emergency and non-emergency calls to various departments operated by the cities of Union Point and Greensboro. It relayed calls from those departments to other agencies, and it processed inquiries from the cities’ police departments through the state and federal criminal information databases. In 1999, the County and various cities entered into intergovernmental agreements regarding such services with the County’s revenues being used to pay for the services. In 2005, the County and the city of Greensboro entered into a new agreement, in which Greensboro agreed to pay \$60,000 per year to help defray the costs of the radio communications services provided by the County.

In 2012, the County paid to upgrade its radio communications system to a state-of-the-art 700 MHz Radio System. While Greensboro continued through its agreement to help defray the costs of the enhanced communications system, the City of Union Point did not, although it continued to use it. In June 2015, the County terminated its dispatch services intergovernmental agreement with Union Point and notified the City of the need to renegotiate the agreement, asking the City to pay \$30,000 annually to help defray the costs of the radio dispatch services.

In October 2015, Union Point sued the County in Greene County Superior Court under Georgia’s Service Delivery Strategy Act, seeking a temporary restraining order, an injunction to prevent the County from discontinuing the dispatch services it had provided to the City since 1999, and mediation. In January 2016, the City and County agreed to mediate all their disputes. The Service Delivery Strategy Act (§ 36-70-20) is designed to discourage government waste caused by the duplication of services and to reduce the amount incorporated area taxpayers subsidize county services that are provided primarily for the benefit of unincorporated areas in the county. However, following mediation, the City and County were unable to resolve the dispatch issues. In June 2016, the County provided notice that it was terminating its intergovernmental agreements with the City of Union Point, which also affected animal control, building inspections, municipal elections, recreation and library services. The County reiterated its previous termination of the dispatch services agreement.

In September 2016, the City filed yet another pleading in court, petitioning for “Judicial Resolution of Service Delivery Strategy and Other Relief,” in which it asked the court to resolve the issues in dispute with the County. Under a provision of the Service Delivery Act – § 36-70-25.1 (d) (2) – if the parties do not come up with a service delivery strategy at the end of

mediation, “any aggrieved party may petition the superior court and seek resolution of the items remaining in dispute.”

Following a two-day March 2017 “bench trial” (before a judge with no jury), the trial court ruled in favor of the County, finding that § 36-70-25.1 (d) (2) was unconstitutional because it violated the separation of powers by delegating legislative authority to the judicial branch. The judge also ruled that the doctrine of sovereign immunity – i.e. the legal doctrine that protects the government or its departments from being sued without its consent – barred the City’s claims requesting an injunction, a “declaratory” judgment (a judge’s declaration of the legal rights of the parties), and payment of the City’s legal costs. The City of Union Point now appeals to the Georgia Supreme Court.

**ARGUMENTS (S17A1878):** Attorneys for Union Point argue the trial court made three errors. First, it erred in finding § 36-70-25.1 (d) (2) unconstitutional, they contend. The trial court relied almost exclusively on the Georgia Supreme Court’s 2013 decision in *Turner County v. City of Ashburn*, which ruled that the judicial review procedure in Georgia’s Local Option Sales Tax Act was unconstitutional. But “the issues that concerned this Court with the Local Option Sales Tax Act are not present in the Service Delivery Strategy Act,” the attorneys argue in briefs. Furthermore, under the Service Delivery Strategy Act, the judge is tasked with judicial review of the intergovernmental agreement and “performs traditional judicial functions, not legislative functions.” The trial court also erred by misconstruing another provision of the Service Delivery Strategy Act when deciding the funding of road and bridge maintenance. The Act “requires a geographic determination of service delivery, not a use determination. “When examining road and bridge maintenance, the trial court misconstrued the statutory language to require a determination as to *who* primarily benefits from the service as opposed to the *geographic area* that primarily benefits from the service.” There was no evidence to dispute that the County’s maintenance of the roads and bridges in only the unincorporated area of the County primarily benefits the unincorporated area, the attorneys argue. “The unrefuted evidence established that Greene County’s road department maintained roads and bridges exclusively in the unincorporated area. Under the current strategy for road and bridge maintenance services, Greene County expressly agreed to provide maintenance services for roads and bridges exclusively in the unincorporated area of the County. Likewise, the Cities expressly agreed to provide maintenance services for roads and bridges within their municipal limits.” Finally, the trial court erred in finding that sovereign immunity bars Union Point’s claims under § 36-70-25.1 (d) (2), the City’s attorneys contend.

Attorneys for the County argue that the trial court correctly ruled that § 36-70-25.1 (d) (2) is unconstitutional. “The trial court correctly held that the Service Delivery Strategy Act Judicial Resolution Clause’s authorization for trial courts to resolve ‘the items remaining in dispute’ and ‘render a decision with regard to the disputed items’ in the arena of local government service delivery strategy amounts to the judiciary impermissibly, and unconstitutionally, taking on a legislative function reserved to the local governments.” That provision of the statute is “compellingly similar to the Judicial Resolution Clause in the Local Option Sales Tax Act declared unconstitutional in *Turner County v. City of Ashburn*,” the attorneys argue in briefs. Also, the issue of roads and bridge maintenance was not properly before the trial court, nor was it addressed at mediation, and therefore “there should be nothing” for the state Supreme Court to review on this issue. Even if that issue is considered, there is no merit to the City’s argument that

the trial court misconstrued the Georgia statute in its analysis. Finally, the trial court correctly ruled that sovereign immunity barred Union Point's claims under § 36-70-25.1 (d) (2), the County argues.

**ARGUMENTS (S17X1879):** In a cross-appeal, Greene County's attorneys argue that the trial court erred in creating "alternative orders" addressing other issues in dispute, which the judge did in case the statute is ultimately held to be constitutional. In its final order, the trial court ruled that the Judicial Resolution Clause of the Service Delivery Strategy Act was unconstitutional and therefore, all remaining contentions of the parties were moot. However, subsequently, the trial court proceeded to resolve other issues by setting forth several "alternative orders" based on the very same Judicial Resolution Clause that it had just determined was an unconstitutional delegation of authority to the judicial branch. In the event the state Supreme Court determines that § 36-70-25.1 (d) (2) is constitutional, the cross-appeal sets forth various errors in the "alternative orders."

The City alleges that the cross-appeal brought by the County is "an unveiled attempt to re-litigate the trial court's findings of fact." Nowhere in its cross-appeal "does Greene County argue that the trial court's findings were based on an absence of evidence in the record," the attorneys argue. "As such Greene County cannot meet its burden." "Union County concedes that the trial court overstepped its authority under the Service Delivery Strategy Act by issuing injunctive relief against the County," the attorneys conclude. "However, given that the record supports the trial court's findings of fact and analysis, Union Point respectfully asks that this Court affirm and preserve the trial court's findings and remand this case for determinations as to whether the County is in contempt and whether to impose costs where the County has acted in bad faith such as with its unilateral levy of unauthorized special district taxes."

**Attorneys for City:** Andrew Welch, III, Warren Tillery, Brandon Palmer

**Attorneys for County:** Angela Davis, Christopher Hamilton, Kenneth Robin

### **JENKINS V. THE STATE (S17A1743)**

A man is appealing his murder conviction and life prison sentence for shooting and killing his 22-year-old son during an argument.

**FACTS:** On Nov. 11, 2012, **Clarence Jenkins, Jr.** picked up Karl Cotton, his second cousin, and the two drove to a friend's house to watch a Falcons' football game. During the game, Jenkins drank some beer, then left shortly to go pick up his son, 22-year-old Chavarious Jenkins, who did not have a car. Jenkins and his son returned to the friend's house for an hour or two, then left with Cotton for Jenkins' house on Chapman Street in **Clayton County**. When they arrived, Jenkins' girlfriend, Latrece Whitfield, was there. The group was in the kitchen having a casual conversation when Chavarious brought up that he wanted to buy his girlfriend an engagement ring and propose to her. His father told him he needed to buy himself a car instead and "get his life together" before buying an engagement ring. Chavarious responded that Jenkins had never helped him with anything. The father and son began arguing and Chavarious punched a hole in the wall. At that point, the two began shoving each other until Cotton broke them apart. Jenkins then left the house, returning about a minute later. As he entered the living room, Jenkins moved toward his son, pointing the gun at him. According to the State, Jenkins threatened to kill Chavarious "for disrespecting me in my house." Chavarious attempted to push the gun away

from his head as he backed up. Cotton then heard a gunshot as Chavarious and Jenkins fell over the back of the sofa.

According to Jenkins' attorney, the gun accidentally discharged when the two fell, shooting Chavarious in the head. As Cotton initially told police, he had walked out of the house before the gun went off, and he had not witnessed the shooting, Jenkins' attorney contends. When Cotton went back inside, after hearing Jenkins' girlfriend scream, Jenkins told him the gun had discharged by accident. According to Jenkins' attorney, Cotton never told law enforcement that Jenkins had threatened to kill his son.

According to the State, Jenkins pulled the trigger and intentionally shot Chavarious in the head as he was falling back over the sofa. Cotton witnessed the shooting and later told the jury what he had seen and heard. After Jenkins shot Chavarious, he placed the gun on the counter and went over and held him. He told Cotton, "Help me, I don't want to go to jail." According to the State, it was only at that point that Cotton left the house.

Clayton County Police Department Sergeant Larry Arnold was dispatched to the home in response to a "person shot" call. He entered the living room and saw Chavarious lying on the sofa with his bleeding head on his father's lap. His father was applying pressure to his head with his hand and a towel, and blood was on the floor and sofa. Arnold called emergency medical services, then secured the Glock pistol he saw lying on the counter. Chavarious died within minutes of being shot on the left side of his forehead.

Following an August 2014 trial, the jury convicted Jenkins of felony murder, aggravated assault, aggravated battery and possession of a firearm during the commission of a felony. He was sentenced to life plus 10 years in prison. Jenkins now appeals to the Georgia Supreme Court.

**ARGUMENTS:** Jenkins' attorney argues the trial court abused its discretion by excluding a statement Jenkins had made at the scene of the crime when he was in an excited state. The trial court conducted a hearing to determine whether Jenkins' statement to the initial responding police officer that the shooting was accidental could be admitted as an "excited utterance." Under Georgia Code § 24-8-803, such an utterance that is made in relation to a "startling event" while the person was "under the stress of excitement caused by the event," may not be excluded by the rule that doesn't allow hearsay. Here Jenkins made the statement while under the stress of the shooting. At the time he spoke to the officer, he was holding his son in his lap as his son lay bleeding from his head. "In this unthinkable, extremely stressful environment, the law enforcement officer asked Appellant [i.e. Jenkins] what occurred and Appellant exclaimed that he was showing his son the gun and the gun discharged accidentally," Jenkins' attorney argues in briefs. "The justification for the 'excited utterance' exception to the hearsay rule is based upon the fact that the stress of a nervous excitement or physical shock 'steals the reflective faculties' and thus, creates an environment for truthfulness." The trial court was wrong to exclude the statement as it was made within four minutes of the 911 dispatch while Jenkins was still "agitated, aggravated and disturbed." In addition, Jenkins' trial attorney was incompetent and ineffective for failing to object when the judge failed to instruct the jury about the law of prior statements made by witnesses. By far, Cotton gave the most damaging testimony against Jenkins during his trial, saying Jenkins and his son argued, the son punched a hole in the wall, Jenkins went and got a gun, threatened to kill his son, and during a struggle over the gun, the gun discharged. "Prior to trial, Mr. Cotton told the responding officers that he was not inside of Appellant's home when this shooting occurred and, in fact, did not see this shooting occur,"

Jenkins' attorney argues. "Therefore, it was critical that the jurors knew that their assessment of any trial witness's credibility may be affected by the witness's inconsistent statements made prior to trial. Nowhere in the trial court's charge is it explained to the petit jury that the jury must decide what testimony they believe and what testimony they do not believe when dealing with the concept of prior inconsistent statements." Jenkins' convictions and sentence must be reversed, the attorney contends.

The District Attorney's and Attorney General's offices, representing the State, argue that the trial court properly excluded Jenkins' "out-of-court" statement to Sergeant Arnold. The state Supreme Court has stated, "*It is the totality of the circumstances*, not simply the length of time that has passed between the event and the statement, that determines whether a hearsay statement was an excited utterance." Here, as the prosecutor argued, "apart from the proximity in time and Appellant's having blood on his clothes, Appellant had not shown the main requirement for admission, i.e., he was in an excited state when he made the statement, and the prosecutor also asserted Appellant had reason to fabricate the statement given his remark to Mr. Cotton that Appellant did not want to go to jail." The trial court therefore did not abuse its discretion in declining to admit the remark as an "excited utterance." The State also argues that Jenkins received effective assistance of trial counsel. Jenkins' trial attorney later testified that he did not object to the court's failure to give his requested jury instruction on prior statements of a witness because he believed it was covered by the court's instruction on "impeachment" of a witness. In that instruction, the trial judge told jurors, "You must determine the credibility or believability of the witnesses. It is for you to determine what witness or witnesses you will believe or which witness or witnesses you will not believe...." Furthermore, Jenkins' trial attorney did cross-examine Cotton, who was the only eyewitness to the shooting, regarding his prior statement to law enforcement in which he initially said he was outside of the house when the shooting occurred. "The trial court sufficiently instructed the jury on the rules by which to decide which version of Mr. Cotton's statements to believe," the State contends.

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

**Attorneys for Appellee (State):** Tracy Lawson, District Attorney, Elizabeth Baker, Dep. Chief Asst. D.A., Jay Jackson, Dep. Chief Asst. D.A., Elizabeth Rosenwasser, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., S. Taylor Johnston, Asst. A.G.

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

### **STATE OF GEORGIA V. SMITH ET AL. (S17A1992)**

The pre-trial appeal in this case stems from the highly publicized murder of a Savannah State College co-ed. State prosecutors are appealing a **Chatham County** judge's ruling that when three young men go on trial for her murder, the jury will not hear what one of them told law enforcement that implicated one of the others.

**FACTS:** State prosecutors hope to prove the following when the case goes to trial: On Jan. 21, 2013, **Kevin Lenard Smith**, Roderick "Rod" Demione Parrish, and Jordan Lamar Campbell attempted to rob Rebecca Lorraine Foley when she arrived home to her apartment on the Southside of Savannah, GA. Foley, 21, was a student at Savannah State University. As Foley

arrived in her red Volkswagen Beetle, the three men, all in their early 20s, approached with a gun, attempting to rob her. Foley attempted to drive her car away, but the men shot her through the rear passenger window. They then fled the scene in a get-away vehicle driven by a fourth man, James Pastures, leaving Foley to bleed to death. According to the State, all four of the men were members of the gang, the Bloods. The four went into hiding, escaping detection until May 2013 when Smith was arrested on unrelated aggravated assault charges from a March 2013 shooting. Authorities determined that the gun used in the March shooting was the same caliber of gun used to kill Foley. During questioning about the March shooting, Smith stated he had purchased the firearm in March 2013 from someone he did not know well, by the name of “Jarod” or “Rod” (as in Roderick Parrish), according to the State. Ballistics testing confirmed that the weapon used in the March 2013 shooting matched the ballistics from the Foley crime scene. Eventually, the men became concerned that Pastures, the driver in the Foley case, was talking to police. Subsequently, the State hopes to prove, Pastures was murdered by gang members Shaqeal Speaks and Henry Sanders on Jan. 19, 2014. While in the Chatham County Jail, Parrish allegedly told another inmate that they had had Pastures murdered to keep him from talking, and Parrish described both the motive for Foley’s murder – robbery – and how the killing took place. Parrish also told the inmate that his status in the gang would be elevated once he beat the charges, according to the State.

In August 2016, Smith, Parrish, and Campbell were indicted for malice murder, felony murder and other crimes related to Foley’s death. Sanders and Speaks were indicted for murder and other crimes related to Pastures’ death. In November 2016, Parrish’s attorney filed a motion objecting to the State’s proposed use of Smith’s statement, while he was in custody, that he had bought a gun from “Rod” Parrish. Following a hearing, the trial judge entered an order blocking admissibility of Smith’s statement unless Smith chose to testify and Parrish’s attorney had an opportunity to cross-examine him, based on the U.S. Supreme Court’s 1950 decision in *Crawford v. Washington*. In *Crawford*, the high court held that cross-examination is required to allow the admissibility of prior out-of-court testimony of witnesses who have since become unavailable. The State then filed a motion to sever Smith from the others being tried, concerned that if he was not tried separately, prosecutors would be limited in their use of Smith’s prior statement to law enforcement about the gun used to kill Foley. The judge denied the motion and jury selection began for the joint trial of Smith, Parrish, Campbell, Sanders and Speaks. But the trial was halted Nov. 29, 2016, and the State now appeals the trial judge’s ruling.

**ARGUMENTS:** The State, represented by the District Attorney’s office, argues that the trial court erred in ruling that *Crawford* precluded the use of Smith’s statement disclosing that in March 2013 he bought a gun from Rod Parrish. Because the statement at issue does not by itself incriminate Parrish, it is admissible under the U.S. Supreme Court’s 1968 decision in *Bruton v. United States*, the State contends. Although that ruling held that a defendant was deprived of his rights under the Confrontation Clause of the U.S. Constitution if a confession by his codefendant was introduced in their joint trial, regardless of whether the jury received instructions only to consider it against the confessor, the Georgia Supreme Court “has repeatedly found statements which are not powerfully incriminating on their face and require other evidence to become incriminating do not offend the Confrontation Clause,” the State argues in briefs. The murder for which Smith and Parrish are charged as codefendants occurred in January 2013. “The fact that Smith claims he got the gun from Parrish nearly two months later does not, without more, tie

[Parrish] or the firearm to the charges in this case and is not powerfully incriminating. Rather, this statement would require significant additional evidence to connect Parrish with the crime, especially in light of what the other charged codefendants say regarding the weapon.” Each of the codefendants pointed to another codefendant as owning the gun. Smith’s statement should be admitted as it is not powerfully incriminating, and the case should be remanded to the trial court with instructions that it provide jury instructions that limit the statement to being used only against Smith, the State argues.

Attorneys for the defendants argue that the trial court ruled correctly that Smith’s statement that he bought a gun from Parrish is inadmissible under *Crawford*. “The Sixth Amendment to the Constitution of the United States guarantees to all defendants in criminal cases the right to confront the witnesses against them,” the attorneys argue in briefs. “This command establishes a right to a face-to-face confrontation of any witnesses presenting testimonial evidence against a defendant at trial.” “The ‘testimonial evidence’ envisioned by this rule includes statements of people to police during interrogations such as the statement made here by the codefendant Kevin Smith.” In this case, the U.S. Supreme Court’s older 1968 decision in *Bruton* does not apply. “The United States Supreme Court radically reshaped the Confrontation Clause doctrine in *Crawford*, categorically barring any testimonial out-of-court statement by a non-testifying declarant, unless the non-declarant has had prior opportunity to cross-examine the declarant or the declarant testifies and is subject to cross-examination,” the attorneys argue. “Consequently, *Crawford* established a new, more absolute rule for compliance with the Confrontation Clause which supersedes the looser approach taken in *Bruton*.” Unless Smith takes the stand and testifies and is subject to cross-examination, “his statement is inadmissible, regardless of whether it is admissible under *Bruton*.”

The trial court’s ruling should be upheld, the defendants’ attorneys argue.

**Attorneys for Appellant (State):** Margaret Heap, District Attorney, Frank Pennington, II, Asst. D.A.

**Attorneys for Appellee (Smith et al.):** Richard Darden

### **BLACKWELL V. THE STATE (S17A1928)**

### **THE STATE V. BLACKWELL (S17A1929)**

A man is appealing his life prison sentence and murder conviction for his role in shooting and killing an innocent bystander and wounding two young children during a gun battle in **Cobb County**.

**FACTS:** The evening of Sept. 16, 2013, Darrold Hadley and his girlfriend, Takeisha Lindsey, were sitting outside the townhouse complex at Oak Hill Circle in Austell, GA. Another young woman, Dionna Jackson, left her porch and walked over to confront Takeisha. With Dionna’s mother egging her on, Dionna hit Takeisha and the two girls began to fight. The altercation attracted a group of bystanders, and soon Hadley’s mother, Deirdre Smith, came outside with her husband to try to stop the fight. As the girls were hitting each other, Dionna’s boyfriend, Khalil Kelly, walked around with his arms folded and a gun visibly tucked into his pants. Upon seeing the gun, one neighbor called 911. **Samuel Rickey Blackwell** also came outside his home, and when he started talking about breaking up the fight, Kelly began arguing with him. According to witnesses, Kelly showed Blackwell his gun and told him to go back inside his home before something happened. Blackwell did go back inside for a minute, then

came back outside with a gun in his hand. He walked up to Darrold Hadley and asked if Kelly was “family.” Hadley said he did not know Kelly. According to State prosecutors, Blackwell immediately began shooting at Kelly, who was some distance away and separated by the crowd watching the fight. Kelly immediately began shooting back at Blackwell with a number of people caught in the middle. The shoot-out ended when Blackwell and Kelly retreated down a hill while taking final shots at each other. In the wake of the shootout, Deirdre Smith lay wounded on the ground. She’d been shot in the leg and back, striking her liver, right lung, heart and aorta. Smith died at the scene from her wounds. A 10-year-old girl also was shot and suffered a wound to her hip. A 4-year-old boy was shot in his leg. Blackwell returned to his home at Oak Hill Circle, then took off in a white Crown Victoria automobile. Moments later, a police officer responding to the shooting saw the car speeding in the opposite direction and chased the car onto I-20, with the high-speed chase reaching up to 120 miles per hour. Two days later, police recovered the abandoned car and traced its owner to a man who lived with Blackwell at Oak Hill Circle.

In December 2013, a Cobb County grand jury indicted Blackwell and Kelly with 11 counts, including the malice murder of Deirdre Smith, the aggravated assaults of the two children, cruelty to children, gun charges and other crimes. In January, the State filed notice that it intended to seek an enhanced punishment of Blackwell as a repeat offender. Following a joint trial in January 2015, Blackwell and Kelly were found guilty of all counts. Blackwell, who now appeals to the Georgia Supreme Court, was sentenced to life plus 45 years in prison.

**ARGUMENTS (S17A1928):** Blackwell’s attorney argues three errors were made during his trial, including that the evidence was insufficient to convict him of malice murder. “There was no evidence that Blackwell had any malice toward this woman, either express or implied,” the attorney argues in briefs. “In fact, there was no evidence presented that he even knew her at all or had intended any harm to her whatsoever. The trial court correctly stated the principal of law in defining malice murder to the jury by stating that in order to sustain a conviction for malice murder, the ‘homicide must have been committed **with malice,**’” or with intent. Also, Blackwell’s constitutional rights were violated when his trial attorney rendered “ineffective assistance of counsel” by failing to advise him about the less serious offense of voluntary manslaughter and by waiving an instruction to the jury about that offense without first consulting with his client. “The question now presents itself whether trial counsel should have informed Blackwell of a lesser included offense to murder and his right to request the court give the charge to the jury,” the attorney contends. “Put reversely, and more directly, is it OK for trial counsel to keep his client completely in the dark about voluntary manslaughter and to not consult him as to whether he wants it charged to the jury?” Finally, the trial judge confused the jury by instructing jurors first that they could consider the law of accident and second that they could consider “transferred intent” in their deliberations. The judge first instructed jurors on accident, stating that, “No person shall be found guilty of any crime committed by misfortune or accident in which there was no criminal scheme, undertaking or intention.” The judge then instructed jurors on the doctrine of transferred intent, stating that, “If one intentionally commits an unlawful act, yet the act harmed a victim other than the one intended, it **is not** a defense that the defendant **did not intend** to harm the actual person injured.” “The effect of the two charges by the court was to tell the jury that it can be an accident if Blackwell had no intent, but under the legal fiction of

*transferred intent*, it didn't matter if Blackwell had no intent," Blackwell's attorney argues. "The two charges, taken together, are confusing."

The State argues that the evidence did in fact authorize the jury to convict Blackwell of malice murder as a party to the crime, applying the doctrine of "transferred intent," which is the rule that if one person intends to harm a second person but instead unintentionally harms a third, the first person's criminal intent toward the second applies to the third as well. Second, Blackwell's trial attorney provided effective assistance of counsel. The trial attorney's decision not to request a jury instruction on voluntary manslaughter was a reasonable strategic choice that reflected Blackwell's account of the facts, the State contends. Furthermore, Blackwell has not shown that he would have been entitled to a jury charge on voluntary manslaughter, even if his trial attorney had requested that instruction. And "Blackwell's contention that he received ineffective assistance of counsel ignores that his conviction is supported by overwhelming evidence of guilt," the State argues. Finally, the trial court properly charged the jury on accident and transferred intent. The trial court's jury instructions are correct statements of the law.

**ARGUMENTS (S17A1929):** The State is appealing the trial court's denial of its motion asking the court to throw out the life prison sentence it gave to Blackwell, arguing he should have been sentenced to life in prison with no chance of parole. Before Blackwell's trial, the State gave notice it would seek the enhanced punishment under the law based on his prior conviction of a felony, which was entering an automobile. Instead, the trial court sentenced him to life plus 45 years, and that was error under Georgia Code § 17-10-7 (a), the State contends. "Under Georgia's recidivist sentencing provisions, § 17-10-7 (a) mandates that a defendant having a prior felony conviction shall be sentenced to the longest sentence prescribed for a new felony conviction." In 2009, the Georgia legislature amended the law to include life without parole within the sentencing range for murder.

Blackwell's attorney argues the trial court did have the authority to sentence Blackwell to life in prison with the possibility of parole. His conviction for "entering an automobile" is hardly a "serious violent felony." Had it been, then under § 17-10-7 (b), Blackwell would have to be sentenced to life without parole. "In the unlikely event the State is correct, then this Court has no alternative but to grant Blackwell a new trial due to ineffective assistance of counsel for erroneous parole advice," the attorney argues.

**Attorney for Blackwell:** Gary Jones

**Attorneys for State:** D. Victor Reynolds, District Attorney, John Edwards, Sr. Asst. D.A., Michael Carlson, Dep. Chief Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

### **WALTON V. THE STATE (S17A1756)**

A man is appealing the murder conviction and life prison sentence he received in **DeKalb County** for his role in killing a man during a shootout.

**FACTS:** Dennis "Cool" Igidi lived with his girlfriend of seven years, Maritza Chick. They had an on-again, off-again relationship, and in the fall of 2012, Igidi was in the process of moving out. On Oct. 28, 2012, Igidi sent his mechanic to the house where he had been living with Chick to pick up his lawn equipment, which he used both personally and professionally, including a tractor, blower, weed eater and hedgers. As Igidi was on the way to the zoo with his 3-year-old daughter, his mechanic called him and said that someone was already at the house

loading up his equipment onto a blue Ford Ranger. Igidi detoured to the house where he found **Kynodious Rontay Walton** getting ready to leave with the equipment. Igidi confronted Walton, but Walton told him that he had just bought the equipment for \$450 from Chick, who had sold it to Walton without Igidi's permission. Igidi told Walton he would buy back the equipment but he only had \$250 on him and would need an hour to get more cash. Igidi then called brothers Byron and Bryant Phillips, explained what had happened, and asked them to come to the house where he had lived with Chick. He wanted to follow Walton so that he would know where his lawn equipment was being stored until he got enough money to buy it back, but he did not feel comfortable following Walton on his own with his daughter in the car. Walton agreed that Igidi would follow him to his uncle's home on Robin Road in DeKalb County where he planned to take the equipment. As soon as the Phillips brothers arrived, Walton drove away and Igidi followed with the Phillips brothers trailing behind in a Chevy Impala.

Igidi later testified that when he arrived at the home of Walton's uncle, he saw Walton with six or seven other men. Igidi said the men quickly gathered around him, then "rushed" him, at which time Walton pointed a gun at him and cocked it. Walton said, "Run them pockets," which Igidi understood to mean he was being robbed. Igidi was unarmed. But the Phillips brothers were well armed, and once they arrived, a shootout ensued. Byron Phillips later testified that Walton had a gun and shot it. Igidi also testified that he saw Walton and Bryant Phillips shooting guns. A witness for the defense later testified that Bryant Phillips had fired the first shot. During the gun battle, Byron Phillips was shot in the arm; Bryant Phillips was shot in the chest and died at the scene. Everyone then fled.

Walton was arrested a few days later. At trial, he argued self-defense and claimed that Igidi and the Phillips brothers followed him to his uncle's house not for the purpose of paying him for the equipment but to take it back by force. Following an April 2015 jury trial, Walton was found guilty of the felony murder of Bryant Phillips, the aggravated assault of Byron Phillips, and gun possession charges. Walton was sentenced to life plus 30 years in prison and now appeals to the Georgia Supreme Court.

**ARGUMENTS:** "This isn't just a case where we are uncertain whether the defendant committed a crime," Walton's attorney argues in briefs. "It is a case where a man who may have encouraged a gang member to shoot at a family over some lawn equipment and a bad breakup escaped all punishment." Three errors were made during Walton's trial, including that his trial attorney was incompetent and ineffective, in violation of Walton's constitutional rights. Walton claims his trial attorney failed to submit evidence that the State's key eyewitness, Igidi, had committed an aggravated assault against his child's mother, Chick, the day before the shooting. Specifically, his trial attorney should have used the police report of the earlier incident to show that Igidi had pulled a gun and pointed it at his ex-girlfriend. Walton's trial attorney later admitted that she had never learned that Igidi had pointed a gun at Chick's head or that he had struggled with her over a knife when he had come to the house after their breakup to pick up his belongings. Rather the trial attorney agreed to the exclusion of the evidence without having read the police report. "Knowledge of the aggravated assault would have likely changed the outcome [of the trial] by rebutting the State's argument that Igidi would not endanger his daughter and [by] discrediting the thoroughness of the State's investigation," Walton's attorney argues. The trial court also erred in excluding evidence that Byron Phillips was a member of the Crips street gang. Finally, the trial court erred in excluding evidence that the State's key eyewitness, Igidi,

confided to a cellmate that his group had fired the first shot at the Walton family, Walton's attorney argues.

The State, represented by the District Attorney's and Attorney General's offices, argues that Walton's trial attorney rendered effective assistance of counsel. "First, Walton's trial counsel was effective in every regard," the State argues in briefs. She was admitted to the Georgia Bar in 1998 and has handled more than 100 felony cases. She helped convince the jury to acquit Walton of malice murder and criminal attempt to commit a felony. "This strongly supports the conclusion that trial counsel rendered reasonably effective assistance at trial," the State's attorneys contend. The defense attorney also was successful in showing that Igidi was angry, upset, and aggressive over Chick's sale of his lawn equipment to Walton. Walton has not met his burden under the law in proving ineffective assistance of counsel, the State contends. The trial judge also properly excluded evidence that Phillips allegedly was a member of the Crips gang. During trial, the State correctly made a motion to prevent Walton's attorney from inquiring if Phillips was a member of the Crips as, "this would amount to improper character evidence since there was no evidence that the shooting incident was gang related," the State argues. The trial judge properly refused to allow the question to be asked, "because it was not relevant." Finally, the trial court properly declined to reopen the evidence after the jury had already begun its deliberations so that an inmate in a holding cell with Igidi during trial could testify that Igidi allegedly told him his group had fired first. "Looking at the totality of the circumstances and the applicable law, the trial court did not abuse its discretion in refusing to reopen the evidence after the jury had begun deliberating," the State contends.

**Attorney for Appellant (Walton):** Andrew Fleischman

**Attorneys for Appellee (State):** Sherry Boston, District Attorney, Lenny Krick, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Haase, Asst. A.G.