



Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, September 11, 2018

10:00 A.M. Session

FIRST ACCEPTANCE INSURANCE COMPANY V. HUGHES ET AL. (S18G0517)

This case stems from a five-vehicle collision in which the man who caused it was killed and a number of people were injured, including a child who was left brain damaged. The man's insurance company is now appealing a Georgia Court of Appeals decision that allows a lawsuit against it to go forward.

FACTS: On Aug. 29, 2008, Ronald Jackson caused a chain-reaction, five-vehicle collision that resulted in his death and injured six others, including Julie An and her 2-year-old daughter, Jina Hong, who sustained a traumatic brain injury. At the time of the wreck, Jackson was insured by **First Acceptance Insurance Company** of Georgia, Inc. under a policy that had liability limits of \$25,000 per person and \$50,000 per accident. On Sept. 10, 2008, the attorney representing An and Hong, contacted First Acceptance and stated he would forward a settlement demand when his clients completed treatment for their injuries. In January 2009, the attorney for First Acceptance sent a letter to the attorneys representing all the injured parties, including An's attorney, seeking to schedule a settlement conference with all the parties. On June 2, 2009, An's and Hong's attorney faxed two letters to the insurance company's attorney with the first letter expressing his clients' interest in having their claims resolved within Jackson's policy limits and in attending a settlement conference. The second letter, referenced in the first letter, requested

that First Acceptance provide insurance information within 30 days and stated that, “Any settlement will be conditioned upon receipt of all the requested insurance information.” After 30 days passed with no response, An’s and Hong’s attorney informed the insurance company’s lawyer that the June 2nd offer to settle had been withdrawn, and he filed a personal injury lawsuit in **DeKalb County** State Court against Jackson’s estate. In July 2009, counsel for First Acceptance sent a letter to counsel for An and Hong, stating that the June 2, 2009 letters from An’s and Hong’s attorney “had been inadvertently placed with some medical records and no follow-up had occurred.” In January 2010, First Acceptance offered to settle Hong’s claims for \$25,000, but An’s and Hong’s attorney rejected the offer. First acceptance later offered to settle both An’s and Hong’s claims for \$50,000, but their attorney rejected that offer as well. In July 2012, the lawsuit proceeded to a jury trial, which resulted in an award of \$5.3 million for Hong’s injuries.

In June 2014, **Robert W. Hughes, Jr.**, administrator of Jackson’s estate, sued First Acceptance Insurance Company, claiming that the insurance company had negligently or in bad faith failed to settle Hong’s insurance claim. The trial court ruled in the insurance company’s favor, granting “summary judgment” to First Acceptance in response to all of Hughes’s claims. (A judge grants summary judgment upon deciding a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) On appeal, however, the Georgia Court of Appeals reversed the ruling, finding that the June 2 letters created genuine issues of fact a jury should decide as to whether An’s and Hong’s attorney offered to settle Hong’s claims within Jackson’s policy limits and whether the offer included a 30-day deadline for a response. Further, the intermediate appellate court ruled that the record established “genuine issues of material fact as to whether First Acceptance acted reasonably in responding to any such offer.” The insurance company now appeals to the Georgia Supreme Court, which has agreed to review the case to answer two questions: Did the Court of Appeals err in reversing the judgment to the insurance company on the basis that questions of fact existed that were up to the jury to determine? And does an insurance company’s duty to settle arise when it knows settlement within its insured person’s policy limits is possible, or only when the injured party presents a valid offer to settle?

ARGUMENTS: Attorneys for First Acceptance Insurance Company argue the Supreme Court should reverse the Court of Appeals decision. “Georgia has not and should not impose extra-contractual liability for breaching the duty to settle unless there is a clear and valid offer,” they argue in briefs. “As a matter of law, there was none in this case.” There are no genuine issues of fact for a jury to decide: An and Hong’s attorney failed to offer to settle their claims within the policy limits and failed to give First Acceptance any deadline to accept the offer, the attorneys contend. There are no questions as to the contents of the governing documents, and so the legal effect of those documents – particularly whether they create a duty to settle or make an offer with a deadline – is a question of law that a judge must decide, not a jury. “The Court of Appeals should have affirmed summary judgment because there was no genuine issue of material fact, and First Acceptance was entitled to judgment as a matter of law,” its attorneys argue. “Courts applying Georgia law frequently grant summary judgment against ‘gotcha’ bad-faith set-up attempts such as the present case and (until this case) the appellate courts have affirmed trial courts that have done so.” Furthermore, Georgia courts have created “safe harbors” to address specific problems arising in the settlement process. The Court of Appeals erroneously

found questions of fact that are “clearly questions of law for the court,” the attorneys contend. “Georgia courts have ruled that an insurer’s duty to settle is triggered only by a valid offer to settle within policy limits.” “Determining whether an insurer ‘knew or reasonably should have known’ that an opportunity to settle within limits was possible will inevitably involve questions of fact that cannot be resolved by the courts and unnecessarily lead to more jury trials – trials tending to focus on the accident victims rather than the parties to the insurance contract,” the attorneys argue. “To be perfectly clear: the intention of letters like the June 2nd letters in this case is not to settle claims; it is to set up further litigation. The law should encourage parties to settle for available insurance proceeds; it should not encourage gamesmanship to create further litigation to attempt to generate liability for ‘deep pockets,’” the attorneys argue. The Court of Appeals “should have applied the rules of contract construction to determine whether the June 2nd letters unambiguously offered to settle within policy limits or below and had a clear deadline to respond.”

Attorneys for Hughes and the Jackson estate argue that First Acceptance’s claim that “five of the six Jackson claimants appeared to have damages above the \$25,000 per person policy limits” is false. Only Hong’s and An’s claims exceeded \$25,000, and First Acceptance knew that the Hong claim “was *by far* the most severe of all the bodily injury liability claims,” the attorneys argue. “Hong and An offered to settle for the ‘available’ insurance coverage because they did not know whether there had been any prior settlements which depleted the \$50,000 per occurrence limits. However, at the time of that offer, First Acceptance had not paid or agreed to pay any portion of Jackson’s \$50,000 policy limits to any of the injured claimants.” It is undisputed that if First Acceptance had settled the claim by tendering the remaining “available” injury liability limits – whether it was \$50,000 or less – along with the requested insurance information, within 30 days of the June 2, 2009 letters, the Jackson estate would not have suffered the \$5.3 million judgment. “An insurer’s duty to settle arises when it knows, or reasonably should know, that not settling will create an ‘unreasonable risk’ of the insured suffering a judgment in excess of the policy limits,” the attorneys for Hughes argue. “The fundamental purpose of liability insurance is, of course, to protect the insured ‘against the risk of loss from the claims of third parties.’” The rule should be clear: “An insurer 1) has a duty to settle when an ordinarily prudent insurer, giving its insured’s interest equal consideration to its own, would recognize that not settling creates an ‘unreasonable risk’ to the insured, and 2) it breaches that duty when it has an ‘adequate opportunity’ to settle and fails to do so,” the attorneys argue. “Moreover, the Georgia Legislature, through its adoption of the model Unfair Claims Settlement Practices Act, has imposed an obligation on liability insurers to attempt ‘in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear.’” The state Supreme Court “should not create a new ‘safe harbor’ that grants immunity to insurers who harm their insureds by failing to settle in bad faith so long as they do not receive a settlement offer from an injured third party.” The Court of Appeals did not err in concluding that there were issues of disputed fact regarding the settlement offer, the attorneys argue. Finally, “First Acceptance is not immune from liability simply because there were multiple injured claimants.” This court should uphold the Court of Appeals decision and remand for the lawsuit against the insurance company to proceed, the Jackson estate’s attorneys contend.

Attorneys for Appellant (First Acceptance): J. Stephen Berry, Robin Johnson, Kyle Wallace, Cari Dawson, Andrew Tuck

Attorneys for Appellee (Hughes): Brandon Cathey, Brent Steinberg

BROOKS V. THE STATE (S18A1282)

A man is appealing his murder conviction and life prison sentence for his role in the shooting death of a man during an attempted robbery in **Houston County**.

FACTS: According to prosecutors for the State, the evidence at trial showed that throughout the night of April 5, 2010, a group of people – including **Nicholas Brooks**, Michael Cossette, and Cossette’s girlfriend, Kelly Williamson – used methamphetamines at a trailer on Collins Avenue in Centerville, GA, located in the middle of the state near Warner Robins. At one point, the three discussed a plan to rob David Colleps. They wanted more drugs needed money, and they had heard that Colleps had both money and “dope” in his trailer, which was down the street on Collins Avenue. Williamson said Colleps was about to get paid \$12,500 in cash for the sale of his trailer, and both she and Brooks were familiar with Colleps’ trailer as they had been there recently. They drew a diagram of the trailer’s layout on a piece of cardboard and told Cossette where Colleps kept his money and drugs.

At about 4 a.m., the three left the trailer and went first to Williamson’s home to make two masks. The plan was that Brooks and Cossette would enter Colleps’ trailer wearing masks while Williamson remained in Brooks’ red Ford pick-up truck as the getaway driver.

When they arrived at Colleps’ trailer, Brooks and Cossette donned their masks, knocked on the door and, armed with guns, kicked in the door. Inside, they discovered not only Colleps, but also his cousin and several others, including Jason Blount and Blount’s fiancé. Colleps and his cousin immediately fled the trailer through a window. Brooks yelled at Blount and his fiancé to get down on the floor, and while she complied, Blount resisted and began throwing objects at Cossette, including a drill. In response, Cossette shot at Blount multiple times, striking him in the chest, which severed his aorta and caused him to bleed to death. Within days, Williamson turned herself into police, Cossette was arrested at a home by a SWAT team, and Brooks was taken into custody at a hotel in Locust Grove, GA, along with his stepmother.

In his taped statement to police after his arrest, Brooks claimed that Cossette had told him that he and Williamson planned to rob Colleps and threatened at gunpoint to hurt Brooks and his family if he did not participate. Testifying as witnesses for the prosecution at Brooks’ trial, Cossette and Williamson testified Brooks was never threatened. Cossette testified that Brooks had wanted to participate because he wanted “gas money;” Williamson said that initially he did not want to participate but eventually “came around.”

In June 2010, Brooks, Cossette and Williamson were jointly indicted for the shooting death of Jason Blount. Brooks was tried separately in April 2011 and found guilty of felony murder, burglary, attempt to commit armed robbery, aggravated assault and gun charges. He was sentenced to life plus five years in prison and now appeals to the Georgia Supreme Court.

ARGUMENTS: “This case, at its heart, turns on the question of whether Nicholas Brooks was coerced into participating in a burglary undertaken by co-defendants Michael Cossette and Cossette’s girlfriend, Kelly Williamson,” Brooks’s attorney argues in briefs, adding that the State was “never able to directly refute the Appellant’s [i.e. Brooks’s] defense of coercion.” Several errors were made during Brooks’s trial and he should be granted a new trial,

his attorney argues. The State improperly edited his videotaped interview with police “in such a way as to misrepresent to the jury Appellant’s statements about the coercion.” Also, his trial attorney provided “ineffective assistance of counsel” in violation of his constitutional rights by failing to challenge the prosecution’s presentation of the “prejudicially” edited statement and by failing to adequately inform Brooks of his right to testify. As a result of these errors, the evidence presented at trial was insufficient to convict Brooks, his attorney contends. “When the circumstantial evidence supports more than one theory, one consistent with guilt and another with innocence, it does not exclude every other reasonable hypothesis except guilt and is not sufficient to prove the defendant’s guilt beyond a reasonable doubt,” Brooks’s attorney argues.

The State, represented by the District Attorney’s and Attorney General’s offices, argues the trial court did not err in allowing the State to play an edited version of Brooks’s statement because the edited version was not unduly “prejudicial” – or harmful to his case – and was not the result of prosecutorial misconduct. “It is established in Georgia that the State may introduce a redacted portion of a defendant’s statement,” the State argues in briefs. The matter of Brooks’s credibility was a matter for the jury to decide based on the evidence. “The State was not under an obligation to play self-serving statements made by Appellant.” The interview itself had lasted about two hours. Due to the length of the interview, “as well as the fact that it contained objectionable references to Brooks’ prior criminal record,” the State introduced an edited version. At trial, a detective testified that he had reviewed the entirety of the recorded interview and that the edited version was accurate. The State also contends that Brooks’s attorney was not ineffective “because her performance was within the bounds of professional standards.” “Because the trial court did not abuse its discretion in admitting the redacted version of Appellant’s custodial statement, an objection by trial counsel would have been meritless,” the State argues. And the evidence was sufficient to support the jury’s verdict that Brooks was guilty of felony murder and the underlying felonies of burglary, attempted armed robbery, aggravated assault, and possession of a firearm during the commission of a crime. Not only did Cossette and Williamson testify that Brooks willingly participated, but by his own admission he was an active participant inside the home in carrying out the attempted armed robbery and subsequent murder. He also actively participated in planning the crime, offered to destroy any evidence of the crime, and immediately fled following the crime. “The evidence adduced at trial was sufficient so that a rational trier of fact could have found Appellant guilty beyond a reasonable doubt,” the State argues.

Attorney for Appellant (Brooks): Francis Dixson

Attorneys for Appellee (State): George Hartwig, III, District Attorney, Daniel Bibler, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.

OVERTON V. THE STATE (S18A1273)

A young man who was 16 years old when he shot another young man in the leg, causing him to bleed to death, is appealing his felony murder conviction and life prison sentence.

FACTS: In 2007, **Aaron Overton**, 16, loaned his friend of several years, Steve McQuire, a .380 pistol that did not belong to him. Overton, whose street name was “Pittsburgh,” expected McQuire, known as “Booty,” to have the gun no more than a day. When McQuire didn’t give it back, Overton started calling people looking for McQuire and the gun. Witnesses

later testified Overton made threats against McQuire and his family if McQuire did not return the gun. McQuire's sister testified that Overton had called her and threatened to kill her and her brother, although she told her brother she thought Overton did not mean it and was just "playing."

On Dec. 2, 2007, a friend called Overton and told him McQuire was at a park in the Oakland City community of Atlanta in **Fulton County** playing basketball. Although Overton, who brought three others with him, did not find McQuire at the park, he found him nearby at the home of another friend, Ralph Woodard. For the next three hours, Overton, McQuire, and the others hung out, ate, smoked marijuana, drank and joked around. Several times, Overton asked McQuire about the gun. McQuire made several phone calls and told Overton he expected a friend's mother to bring him the gun that day at Woodard's home so he could return it to Overton. But she never came and eventually McQuire got up to leave. By then, Overton had grown increasingly angry.

According to witnesses, Overton and McQuire started arguing, and Woodard told them to walk down the driveway. The witnesses gave somewhat different accounts, with some saying McQuire had a gun sticking out of his coat, which he tried to pull out, while others said Overton pulled out a gun, which McQuire was trying to push down. A brief face-to-face tussle ensued, and then a gunshot went off and McQuire was hit once in the leg. Overton testified in his own defense that while he was angry at McQuire and intended to fight him, he never intended to shoot him. Woodard and another friend testified that shortly before the gun went off, they heard McQuire saying to Overton, "No, don't shoot, don't shoot." They said they did not believe McQuire had a gun that day. After the shooting, Overton fled the scene. Several days later he was apprehended in Pittsburgh, PA at his grandmother's house and brought back to Atlanta. Law enforcement officers, meanwhile, found McQuire on the back porch of one of Woodard's neighbors' homes. His pants were soaked with blood. The bullet had entered McQuire's right thigh, severed his femoral artery and vein, and he had bled to death.

In March 2010, a Fulton County jury convicted Overton of felony murder, aggravated assault, and possession of a firearm during the commission of a felony. He was acquitted of malice murder and sentenced to life in prison. Overton now appeals to the state Supreme Court.

ARGUMENTS: "The only issue at trial was Overton's intent," his attorney argues in briefs. "There were at least five people who witnessed the incident and there were nearly as many different versions of events presented to the jury." Involuntary manslaughter is a "lesser included" offense of murder, and the trial court erred in failing to instruct jurors about the law on this less serious crime. Overton's attorney had made two written requests to the judge, asking the judge to instruct jurors on both involuntary manslaughter and reckless conduct. But the judge, who agreed to give a jury instruction on accident, refused to also instruct the jury on involuntary manslaughter and reckless conduct, finding the latter two charges were inconsistent with accident as defenses. "But the law provides that the trial court was obligated to instruct the jury on *any* charge supported by even *slight* evidence, regardless of whether it was inconsistent with the offenses as charged, or with other defenses that Overton presented," the attorney argues. "Here, the trial court should have given charges on the two lesser included offenses, involuntary manslaughter predicated on reckless conduct, and reckless conduct because they were supported by the evidence and because not giving the charges prejudiced Overton by prohibiting him from arguing a meritorious defense." Under Georgia statutory law, "A person commits the offense of

involuntary manslaughter in the commission of an unlawful act when he causes the death of another human being without any intention to do so by the commission of an unlawful act other than a felony.” Involuntary manslaughter, which requires an unlawful act but no intent to cause the death, represents an intermediate level between murder and accident or self-defense, where no crime at all has been committed. “When there is evidence to support an intermediate level of culpability, the court cannot ignore that evidence, even though it may be inconsistent with the charge as indicted and with other defenses raised by the defendant,” the attorney contends. “Aaron Overton did not receive a fair trial because the jury was not authorized or instructed that if it found Overton was acting unlawfully, but not committing a felony, when he unintentionally caused Steve McQuire’s death, it could find him guilty of involuntary manslaughter predicated on [i.e. based on] reckless conduct. Similarly, the jury was not instructed that if it found that Overton did not intentionally shoot McQuire but that he was engaging in reckless conduct, it could find him guilty of reckless conduct, rather than aggravated assault. It was error not to instruct on these viable theories of guilt, which were supported by evidence presented at trial,” Overton’s attorney argues. “For this reason, a new trial is warranted.”

The State, represented by the District Attorney’s and Attorney General’s offices, argues the trial court did not err when it charged the jury with an instruction on accident instead of involuntary manslaughter based on reckless conduct. As the judge said at trial, an involuntary manslaughter instruction was inconsistent with an accident instruction based on the Georgia Supreme Court’s 2007 ruling in *Roberts v. State* and its 2008 ruling in *Lashley v. State*. “Without question, Appellant [i.e. Overton] referred to the circumstance as an accident,” the State’s attorneys argue in briefs. Furthermore, the “evidence presented was supportive of a finding of intent to harm which was inconsistent with involuntary manslaughter.” Witnesses testified that in the days leading up to the shooting, Overton had made threats against McQuire. McQuire’s sister testified that Overton had called her and said, “Tell your brother that I’m going to kill you and him.” “Ultimately, the State put on evidence that Appellant had made multiple threats against the victim, that he arrived looking for the gun, that when it did not appear that he was getting his gun back he was ready to fight the victim, that Defendant had pointed his gun at McQuire, that he had fired the weapon, and that McQuire died from the gunshot,” the State argues. “The credible evidence was, therefore, not consistent with a finding of lack of intent and reckless conduct. Rather, the act appeared to be deliberate. The jury instructions were adjusted to the facts as presented.” Also, a ballistics expert testified that significant force would have been required to pull the trigger on the gun – force that likely would not have been present during the alleged “tussle.”

Attorney for Appellant (Overton): Christina Cribbs

Attorneys for Appellee (State): Paul Howard, Jr., Lyndsey Rudder, Dep. D.A., David Getachew-Smith, Chief Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

HENDERSON V. THE STATE (S18A1153)

A man is appealing his conviction for the murder of a woman in **Fulton County**, arguing the evidence was insufficient to convict him beyond a reasonable doubt.

FACTS: According to prosecutors for the State, **Frank Henderson** was a “well-known pimp” in the Metropolitan Parkway and Cleveland Avenue area of Atlanta who controlled a

number of prostitutes. Monica “Pumpkin” Davis and her friend, Phyllis Ann Thompson, were known as “renegade” prostitutes, meaning they worked independently without being under the control of a pimp. On Sept. 8, 2004, around midnight, Davis and Thompson stopped at a Citgo gas station on Cleveland Avenue so Davis could meet her boyfriend. While Davis and her boyfriend were talking, Henderson drove by in a Chrysler Pacifica with a car full of prostitutes. He was dropping off one of them, Kisha, so she could “turn a trick.” Henderson began circling Davis and Thompson, giving them negative looks, before parking his car and getting out, according to Thompson. After a brief conversation with Thompson, Henderson signaled Tiffany Turner and the other prostitutes in his car to attack Davis, the “renegade” he did not control. One of the women handed Turner a pink stiletto shoe, which Turner hurled at Davis, striking her. Davis, who was 6’2” tall and weighed 273 pounds, handed her phone to Thompson and got out of the car to fight Turner. As the women fought, two more of Henderson’s “girls,” one of whom was 8 months pregnant, got out of Henderson’s car and joined Turner in beating Davis. After the fight ended, Davis began walking back to her car, at which time, according to witnesses, Henderson ordered Turner to “get in the car,” “get that hoe,” “kill that hoe.” Turner jumped into the Pacifica and ran over Davis with the car. She then backed up so Henderson and the other women could get in, and she again drove over the victim. Before leaving the scene, Turner drove to the bathroom area to pick up Kisha who had been in the restroom with a man. At some point after driving away, Turner pulled over and Henderson got into the driver’s seat. He then took them all to a motel off Fulton County Industrial Blvd. where he emptied the batteries from their cell phones so they could not be traced. Henderson told the women to stay in the motel room, and he left. Davis later died at Grady hospital in downtown Atlanta.

While Henderson was gone, one of the women called Henderson’s mother, Diadra Nelson, who came and picked the women up and took them back to her home, where they typically stayed. Nelson encouraged Turner to speak to police and took her to the precinct. While waiting to speak to a detective, Turner heard from Henderson who told her to make sure she told police he was in the Kroger Plaza parking lot when the incident occurred. Soon after, Turner confessed as directed by Henderson that she had killed Davis but it was an accident. Later at trial, Turner said she had lied to police and was only doing as Henderson had commanded for fear he would beat her.

In 2007, Henderson and Turner were jointly indicted for malice murder, felony murder based on aggravated assault, and several other crimes related to Davis’s death. Henderson was also indicted for influencing a witness, i.e. Turner. On the first day of trial, Turner pleaded guilty to voluntary manslaughter and aggravated assault in exchange for a lesser sentence if she testified truthfully against Henderson. Following an August 2007 trial, the jury found Henderson guilty of felony murder, aggravated assault and influencing a witness. He was acquitted of malice murder and aggravated assault with a deadly weapon. Henderson was sentenced to life in prison with the possibility of parole. He now appeals to the state Supreme Court.

ARGUMENTS: Henderson’s attorney argues the trial court made a number of errors and Henderson deserves a new trial. Among them: The verdict was “contrary to evidence and justice” and “decidedly and strongly against the weight of evidence,” both of which necessitate a new trial under Georgia Code § 5-5-20 and § 5-5-21. Henderson also received “ineffective assistance of counsel” in violation of his constitutional rights, Henderson’s appeals attorney argues. Among the deficiencies, his trial attorney failed to investigate and present two witnesses

who would have offered evidence pointing to his innocence; the attorney failed to object to the solicitation of hearsay from Tiffany Turner and a police officer; and the attorney failed to object to improper argument by State prosecutors in their opening statement. The court also erred in admitting “similar transaction evidence” of past unrelated acts by Henderson that damaged his case and for which there was no proper notice or pretrial hearing before it was admitted. Furthermore, the attorney argues the trial court erred by allowing the State to elicit “improper prior bad acts” by Henderson that “solely placed the defendant’s character at issue without a relevant purpose save propensity to commit crime.”

The State, represented by the District Attorney’s and Attorney General’s offices, argues the evidence against Henderson was “legally sufficient;” Henderson’s trial attorney was not ineffective; the trial court properly admitted the “prior difficulty evidence” of violence between Henderson and Turner, which was not the same as “similar transaction evidence” and did not require notice or a pretrial hearing before it was admitted; finally, the trial court properly permitted Turner to testify about her interactions with Henderson after she had been raped by a “john” as it was “clearly relevant to show the dynamics of their pimp/prostitute relationship, specifically that Appellant [i.e. Henderson] had the power to make Turner work even after a sexual assault,” the State argues.

Attorney for Appellant (Henderson): Gerald Griggs

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Aslean Zachary Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.