



**Supreme Court of Georgia**  
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## **CASES DUE FOR ORAL ARGUMENT**

### **Summaries of Facts and Issues**

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**Tuesday, March 19, 2019**

#### **10:00 A.M. Session**

#### **CITY OF COLLEGE PARK V. CLAYTON COUNTY ET AL. (S19A0460)**

The **City of College Park** is appealing a Fulton County court ruling that bars the bulk of its lawsuit against **Clayton County** on the ground that the County is shielded by “sovereign immunity” – the legal doctrine that protects government entities from being sued without the government’s consent.

**FACTS:** This is the second time this case has been before the state’s high court. At issue is a longstanding dispute between the City of College Park and Clayton County over the share each gets of tax revenue from alcohol sold at Hartsfield-Jackson Atlanta International Airport.

The airport is owned and operated by the City of Atlanta but is located primarily within the geographic limits of Clayton County. A sizable portion is located in an area of Clayton County that is incorporated within the city limits of College Park, but some of the airport’s businesses sit in unincorporated sections of the County.

In 1983, the Georgia legislature enacted Georgia Code § 3-8-1 (e) as part of the Alcoholic Beverage Code. The provision states that the “proceeds of the taxes which the county and the municipality are authorized by law to impose and collect on the sale, storage, and distribution of alcoholic beverages at the airport shall be equally divided by the county and the municipality.” For more than 30 years since the enactment of § 3-8-1, Clayton County and College Park had a

policy by which vendors of alcoholic beverages at the Atlanta airport remitted one half of the excise tax revenues to the County and one half to the City. In 2007, however, the City began arguing that this approach technically never did comply with the requirements of the Constitution and the Code as the County was “collecting” such monies outside its authorized jurisdiction.

In February 2014, the County sent a letter to all the airport’s alcohol distributors and vendors instructing them not only to remit to the County 50 percent of the taxes from the sale of distilled spirits in portions of the airport situated within College Park’s limits, but also to remit *all* taxes from the sale of distilled spirits in sections of the airport situated in unincorporated areas of Clayton County. The City objected and solicited an opinion from the state Attorney General. In a July 2014 letter, the Attorney General’s office responded that “Clayton County is not authorized to impose a tax on alcoholic beverages at the same location where the City of College Park is authorized to impose such a tax.” It also noted that Georgia Code § 3-8-1 (e) “plainly provides that the proceeds of the taxes on the sale, storage, and distribution of alcoholic beverages at the airport are required to be divided equally between the City of College Park and Clayton County.” The City subsequently requested that the County remit to the City the \$2.5 million in alcoholic beverage tax monies it claimed the County had wrongfully collected since § 3-8-1 became effective in 1983.

When the County did not respond, in March 2015 the City sued the County and County officials in Fulton County Superior Court. The complaint contained 14 counts, including a request for a “declaratory” judgment, asking the court to declare that all collected airport alcoholic beverage tax monies were to be equally divided between College Park and Clayton County, including those from parts of the airport in unincorporated areas of the County. The City also sought a declaration that Clayton County was precluded from collecting taxes from airport alcoholic beverage transactions that occur in College Park’s limits. Clayton County filed a motion requesting a “judgment on the pleadings,” i.e. asking the court to rule in its favor based on the formal written statements of its claims and defenses. Among other things, the County argued in the pleadings that based on sovereign immunity, the County was shielded from lawsuits seeking a declaratory judgment. In October 2015, the trial court issued an order denying the County’s motion and ruling that sovereign immunity did not apply to the City’s claims. The County then appealed to the state Supreme Court. While the County’s appeal was pending, the Supreme Court issued an opinion in *Lathrop et al. v. Deal et al.*, in which it ruled that sovereign immunity bars claims involving an alleged violation of the Constitution unless the government has consented. However, when the high court subsequently issued its decision in *Clayton County v. City of College Park et al.* in June 2017, it stated that, “there is a threshold question of whether sovereign immunity applies at all in suits between political subdivisions of the same sovereign (like the City and the County), a question that the trial court did not address and the parties have not adequately briefed. It is a complex and important question, and one that we are reluctant to address in the first instance without affording the trial court an opportunity to consider the question and without complete briefing by the parties.” The high court therefore vacated the lower court’s decision and remanded it to the lower court to determine whether or not College Park’s claims against the County were barred by sovereign immunity.

On remand, this time the trial court ruled in favor of the County and held that the City's claims against the County were barred by sovereign immunity. The City now appeals to the Georgia Supreme Court.

**ARGUMENTS:** Attorneys for the City of College Park argue the trial court erred in ruling that the doctrine of sovereign immunity as established by Paragraph 9 (e) of Article I, Section II, Paragraph IX of the Georgia Constitution applies to the City's claims against the County. Paragraph 9 (e) states that "sovereign immunity extends to the state and all of its departments and agencies" and it can be waived only by "an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." The City's attorneys argue that "more than two centuries of legal authority clearly show that the sovereign immunity presently conferred in Paragraph (e), does not apply." "The City and the County serve as the agent of the same sovereign, the State, as to these matters. Paragraph 9 (e)'s immunity does not apply as the County is not the 'sovereign' to the City," they contend. The City and County are "equal agents of the same sovereign," and the trial court erred in concluding otherwise. Also, in the 230 years that Georgia has recognized sovereign immunity, "no court decision has ever expressly extended the doctrine to a lawsuit between a county and a city," the City's attorneys contend. There are serious public policy consequences to the operation of government if sovereign immunity applies in this type of litigation. "If the immunity applies to litigation such as this, counties and cities would be significantly hindered in their ability to resolve intergovernmental disputes." This Court should reverse the trial court's ruling, the City's attorneys contend.

The County's attorneys argue the trial court properly ruled that the City of College Park's claims against Clayton County are barred by sovereign immunity. "The doctrine of sovereign immunity has been a part of the law of Georgia since our adoption of the common law in 1784," they argue, and "the vitality of a county's sovereign immunity remains a fixture in the law today." In its first decision in this case, the state Supreme Court found that the trial court's original ruling – that sovereign immunity did not apply to the City's claims against the County – was wrong. Most recently, in 2018, the Georgia Supreme Court ruled in *City of Union Point v. Greene County* "that sovereign immunity applies to bar claims filed by a city against a county in the absence of a legislative act waiving the immunity." Here, the City of College Park's argument "ignores established law that it is the City's burden to demonstrate a legislative waiver of sovereign immunity, which is a burden that the City has not met," the County's attorneys argue. The City incorrectly argues that cities and counties are somehow equal. "Cities and counties, in fact, hold a very different legal status under Georgia law," the attorneys argue. "Counties are established by the Georgia Constitution and are subdivisions of the State. Alternatively, cities are established by the legislature 'and their existence may be established, altered, amended, enlarged or diminishes, or utterly abolished by the legislature.'" Therefore, "unless and until a law is passed by the legislature allowing suit by a city to proceed against a county, thereby specifically waiving the sovereign immunity with which a county is constitutionally cloaked, sovereign immunity remains a bar to a municipality's claim against a county," the County's attorneys argue.

**Attorneys for Appellant (City):** Steven Fincher, Winston Demark, Eugene Smith, Jr.

**Attorneys for Appellees (County):** Richard Carothers, Thomas Mitchell, Amy Cowan

## **THE STATE V. WILLIAMS (S19A0185)**

The State is appealing a **Fulton County** court's dismissal of an indictment that charges a man with felony murder and distribution of heroin for allegedly injecting the drug into a man who then overdosed and died.

**FACTS:** According to state prosecutors, on Oct. 21, 2015, Leslie Greg Ivey spent the afternoon drinking with a friend before returning to his apartment that he shared with Joshua Andrew Kennedy. That evening, Ivey texted Kennedy, who was out at the time, that he wanted to get high on cocaine. Kennedy returned to the apartment that night with Alexis Gladden. **Graham Williams** was also there. Gladden later testified that when she and Kennedy arrived, heroin was already there. According to prosecutors, Gladden reported that Ivey had never done heroin before and wanted to try it, but only "a little." According to Gladden, Williams began preparing the heroin, stating he wanted Ivey "to feel it and have a good time." Gladden estimated that 50-to-60 units of heroin were in the syringe, and that she warned Williams "it was too much." Williams nevertheless injected the heroin into Ivey, who almost immediately collapsed and became unconscious. Approximately 15 minutes later, Gladden called 911 and, according to the State, she and Kennedy began performing CPR on Ivey until emergency responders arrived. Ivey was transported to North Fulton Regional Hospital where he was pronounced dead. The Milton Police Department subsequently obtained arrest warrants for Williams, who turned himself in on Dec. 4, 2015. On Feb. 20, 2018, the State filed an indictment charging Williams with one count of Distribution of Heroin, and one count of Felony Murder based on the predicate felony of distribution of heroin. There is no controlled-substance homicide statute in Georgia, but Georgia Code § 16-5-1 (C) states that a person may be convicted of felony murder "when, in the commission of a felony, he causes the death of another human being irrespective of malice."

In March 2018, Williams's attorney filed a "general demurrer" to the indictment, challenging the indictment for failing to sufficiently charge a violation of the law. Additionally, his attorney filed a "plea in bar," in which he argued that under Georgia Code § 16-13-5, Williams was immune from prosecution. The statute says that, "Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation...." Following a hearing, in August 2018, the trial judge dismissed the indictment. The judge ruled that the "actions of the defendant do not amount to 'possession with the intent to distribute'" because "the term 'distribute' in the context of Georgia Code § 16-13-30 is used to describe the sale of controlled substances, not the consumption of such and certainly not the injection of heroin by one person into the body and at the request of another." The trial court ruled that this determination was fatal to both counts in the indictment and therefore dismissed the indictment. The State, represented by the Fulton County District Attorney's office, now appeals to the state Supreme Court.

**ARGUMENTS:** The State argues the indictment is legally sufficient to withstand Williams's demurrer – or challenge – and it was error for the trial court to dismiss the indictment. The trial court also erred by converting a general demurrer involving a criminal indictment into a civil motion for "summary judgment," a procedure not available in criminal law. (A court grants summary judgment after determining a jury trial is unnecessary because the facts of the case are undisputed and the law falls squarely on the side of one of the parties.) The trial court also erred by finding that the term "distribute" as used in Georgia Code § 16-13-30 is

exclusive to the sale of controlled substances. Under § 16-13-30, the word “distribute” is defined and means “to deliver a controlled substance, other than by administering or dispensing it.” “Moreover, the opinions from the Georgia Court of Appeals, numerous other states, and federal jurisdictions, including the Eleventh Circuit Court of Appeals, where distribution of controlled substances has been broadly construed to encompass more than a sale, are highly persuasive authority that this Court should apply in reversing the trial court,” the State argues. “In addition to erroneously defining ‘distribution,’ the trial court improperly implies there was joint possession that bars prosecution,” the State argues. “As the record shows, the evidentiary hearing is void of any testimony regarding an agreement to purchase heroin, and there is no evidence who purchased the heroin, when it was purchased, or what payment arrangement was agreed upon.” Furthermore, the question of joint possession is a question of fact for the jury to decide. Regardless, at the pre-trial hearing, Williams conceded that he injected the victim with heroin, “and this fact alone is sufficient to overcome a joint possession defense,” the State argues. At the point Williams took control of the heroin, prepared it, and placed it into the syringe, the victim relinquished any possession he may have had and Williams took possession of the heroin. “Clearly, they were not equal participants in any hypothetical agreement to purchase and consume heroin,” the State argues.

Williams’s attorney argues he is not disputing that the charge of distribution, as stated in the indictment, is not a crime. “Rather, Defendant is not and cannot be factually guilty of the crime of distribution.” “The plain ordinary meaning of transfer requires the transferor to own the controlled substance.” Here, the heroin was not Williams’s property. “Injecting heroin into a friend upon request is not distribution when the heroin was for the user’s personal use and the individual injecting the heroin did not act as a link in the chain of commercial distribution,” the attorney argues. “There are no cases that directly define whether distribution includes injecting heroin into a friend upon request for personal use and not for a profit.” “Defendant was not distributing drugs because he was not selling the drugs, nor did he have the intent to distribute; he was merely with his friend Ivey when Ivey asked Defendant to help him with the injection,” Williams’s attorney contends. “Because Defendant did not supply a controlled substance, participate in the purchase of a controlled substance, or give away a controlled substance, and because Defendant was not a link in the chain of distribution, the trial court’s dismissal of the distribution of heroin charge was correct.”

**Attorneys for Appellant (State):** Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A.

**Attorneys for Appellee (Williams):** Manubir Arora

### **BOURASSA V. THE STATE (S18G1136)**

A man is appealing a ruling by the Georgia Court of Appeals upholding his convictions and 40-year prison sentence for his role in selling and distributing drugs.

**FACTS:** **Jeffrey Alan Bourassa** was one of 35 defendants charged in a seven-count indictment returned in 2013 by a **Douglas County** grand jury. Bourassa was charged with conspiracy to violate the Georgia Controlled Substances Act, violation of the Act by possession of more than one ounce of marijuana, and violation of the RICO (Racketeer Influenced Corrupt Organizations) Act by using a telephone to arrange the purchase of more than one ounce of marijuana.

According to the facts at trial, in late 2012, the Douglas County Sheriff's Office began investigating William German Beltran, one of the defendants in this case, after agents cultivated a confidential informant and executed a controlled purchase of marijuana from Beltran. Agents subsequently sought and executed a wiretap on one of Beltran's cell phones beginning in March 2013. The ensuing investigation involved extensive surveillance and wiretaps on multiple phones that resulted in the interception of 15,000 calls and text messages. Investigators uncovered an organization involved in money laundering and the purchase, sale, and distribution of marijuana, cocaine, Xanax, and Roxicodone (one of the brand names for oxycodone, an opioid prescription painkiller). They seized large quantities of marijuana, pills, cell phones, and cash from those involved in the criminal enterprise.

Soon after activating the wiretap on Beltran's phone, officers began intercepting calls and text messages from a phone number on which a male identified himself as J.B., a nickname used by Bourassa. The communications dealt with the purchase, sale, or exchange of large quantities of marijuana and pills. In March 2013, intercepted communications between Bourassa and Beltran revealed that they were arranging to meet for a deal involving four pounds of "bubba," a high quality strain of marijuana. Text messages and surveillance footage resulted eventually in Bourassa's arrest on Interstate 20 in Douglas County. During a search of the white Jeep Liberty vehicle in which he was riding, officers found a bundle of 448.5 grams of marijuana, several cell phones and \$4800 in cash.

Prior to his trial, Bourassa's attorney filed a motion to suppress the intercepted phone conversation. The trial court denied the motion, ruling that Bourassa lacked standing to challenge the communications because he failed to offer any evidence of his standing.

At his 2015 trial, State prosecutors presented evidence that Bourassa had been charged previously in connection with a Cobb County case involving a criminal organization known as "Ghost Face" that distributed marijuana and pharmaceuticals. In that case, Bourassa pleaded guilty to multiple racketeering charges. Following the 2015 jury trial, Bourassa was convicted of all three counts with which he was charged, and he was sentenced to 20 years in prison. Bourassa appealed, but the Court of Appeals, Georgia's intermediate appellate court, affirmed his convictions and sentence, although it remanded the case to allow Bourassa to argue some of his claims that his trial attorney had rendered "ineffective assistance of counsel" in violation of his constitutional rights. Bourassa now appeals to the Georgia Supreme Court, which has agreed to review his case to determine whether the Court of Appeals erred in upholding the trial court's ruling that Bourassa lacked standing to seek to suppress the intercepted phone conversations.

**ARGUMENTS:** Bourassa's attorney argues the Court of Appeals erred. "Under Georgia law, a defendant cannot establish standing – or that he is an aggrieved party – on a motion to suppress intercepted telecommunications where 1) he was not the subscriber of the wiretapped phone *and* 2) his voice was not heard on any of the intercepted calls," the attorney argues in briefs. But in this case, the evidence shows through an officer's testimony that Bourassa's voice was heard and was a party on some of the phone calls. Here, there was direct evidence of Bourassa's standing. Yet in upholding the trial court's position denying Bourassa's motion seeking a new trial, the Court of Appeals misapplied the legal rationale adopted in two federal cases. "The Court of Appeals, in utilizing federal cases that stand for the proposition that a defendant cannot establish standing by using the 'State's position, contention, or theory,' has misapplied this legal rationale to a case where Appellant [i.e. Bourassa] adduced direct evidence

of his standing from a State witness on cross-examination,” Bourassa’s attorney argues. Based on these inapplicable federal decisions, in order for the Court of Appeals to rule against Bourassa, it would have to find that the officer’s testimony, which he gave in response to questioning by Bourassa’s attorney, was not evidence presented by Bourassa. “This cannot plausibly be done,” his attorney argues. “Testimony in response to a question from Appellant is direct evidence, plain and simple. Accordingly, the Court of Appeals decision is not at all supported by the federal cases cited and must be reversed.”

The State, represented by the District Attorney, argues the Court of Appeals properly affirmed the trial court’s ruling that Bourassa lacks standing to seek to suppress the intercepted phone conversations. It is the sole issue in this case, and Bourassa lacks standing because he “presented no evidence that he was the unidentified male speaker heard on some of the intercepted phone calls,” the State argues in briefs. On cross-examination, an officer involved in the investigation testified that he “merely *believed*” that Bourassa could be heard on the intercepted calls. “And so it’s your *belief* and testimony that Bourassa was a party to some of the phone calls that were tapped, that were listened to on this tap?” the prosecutor asked the officer. “Yeah, he was part of the conversations that we received,” the officer responded. The officer “never positively identified Appellant as the unknown speaker but simply theorized he was the speaker based on the evidence they had obtained,” the State argues. In later testimony, the officer said he had never met Bourassa, had never interviewed him, and was unfamiliar with how his voice sounded. “He further testified that it was ‘basically a guesstimate that that’s Bourassa’s voice on the wire.’” The trial court denied the motion to suppress, explaining that the evidence came solely from the State. “Specifically, the defendants did not offer any evidence that they were parties to any of the conversations intercepted pursuant to any of these orders,” the judge’s order stated. “The defendants also did not stipulate or concede that they are parties to any of those conversations....They have not offered any evidence of their standing, nor can they rely on the State’s position, contention, or theory to establish standing.” The Court of Appeals correctly upheld the trial court’s ruling, the State contends.

**Attorney for Appellant (Bourassa):** Stephen Reba

**Attorneys for Appellee (State):** Ryan Leonard, District Attorney, Aimee Sobhani, Asst. D.A.

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

### **THE STATE V. NEWMAN (S19A0374)**

The State is appealing a ruling by a **Chatham County** court that granted a new trial to a man convicted of murder.

**FACTS:** **David Miller Newman**, a convicted felon, worked as a supervisor at a company called Salt Creek Couriers (“Salt Creek”). On the morning of June 16, 2016, one of the employees of Salt Creek, Jason Wood, failed to report for work, and Newman went to Wood’s home in Savannah, GA and fired Wood from his job as a courier. Newman took the keys to the company van from Wood and planned to return later to retrieve the van. Although Newman did not have any violent confrontation with Wood at that time, he nevertheless decided to get a handgun before returning to Wood’s house based on what he later said was “a gut instinct.”

Newman returned to get the van around 6:30 p.m. that night with Carolee Pritchard, one of Salt Creek's owners.

Wood's girlfriend, Candace Shadowens, was with Wood at his home when Newman arrived. When she went outside where Wood was, he told her to call police because Newman had pulled a gun on him. According to the State, at that point, Newman reached over the door of the company van and shot Wood in the chest from one to two feet away as Wood attempted to push Shadowens out of the way. Although a small amount of blood was later found on part of the inside door frame of the van, almost all of Wood's blood was located on the outside of the van, which indicated, according to the State's forensic pathologist, that Wood was not inside the van, but outside of it, when he was shot. A neighbor of Wood's who was a registered nurse attempted to render aid to Wood at the scene, but Wood died from his gunshot wound. When officers arrived, Shadowens told them Newman had shot Wood.

While fleeing the scene in the company van, Newman threw his handgun out the window and called 911. The gun was later recovered by police. During the 911 call, Newman claimed that Wood had had a gun and shot at him. The police pulled Newman over while he was still on the phone with 911, and he then informed police that he did not know what had happened and that he had just heard a gunshot and driven away. When Newman was later interviewed by police, he changed his story, claiming that neither he nor Wood had a gun, and that when he heard a loud boom he thought that a neighbor had shot a gun. Newman was arrested, and when he was interviewed a second time by police, he changed his story again, now admitting that he had a gun, but claiming that the gun accidentally went off when Wood attacked him.

On September 14, 2016, Newman was charged with malice murder, felony murder, and a number of other crimes, including possession of a firearm by a convicted felon. After he was indicted, Newman changed his story once more, saying in an interview with the prosecuting attorney that when he arrived at Wood's house with a gun, Wood came out of the house with Shadowens behind him, and that Shadowens was carrying a baseball bat. Newman told the prosecutor that Wood had jumped into the company van while Newman's gun was on his lap, and that as the gun started to fall, Newman grabbed it and it accidentally went off.

Prior to trial, a hearing was held on Newman's possible immunity from prosecution. At that hearing, Newman provided another version of events. This time, he stated that when he went to get the van, Wood began arguing with him about money. Newman said that Shadowens opened the door of the van, and Wood charged inside. Newman said that he then grabbed his gun as it was falling, and the gun accidentally went off.

Newman testified in his own defense and changed his story yet again from the previous versions he had told. This time he claimed that he had gotten the pistol from his sister and that when Wood started to get into the van to rob him, the gun had slipped from Newman's lap and fired.

Following the April 2017 trial, the jury found Newman guilty of felony murder, aggravated assault, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. He was sentenced to life in prison without parole plus 10 years.

Newman filed a motion for new trial, and following a hearing, the trial court granted it, finding that Newman's trial attorney had rendered "ineffective assistance of counsel" in violation of his constitutional rights for failing to ask the judge to instruct the jury about the law pertaining to "defense of habitation." Georgia Code § 16-3-23 states a person is justified in using lethal

force to stop a person's "unlawful entry or attack upon a habitation" if the entry is made in "a violent and tumultuous manner" and the person "reasonably believes that the entry is attempted or made for purpose of assaulting or offering personal violence...." (Under Georgia law, "habitation" includes a "motor vehicle.") The trial judge ruled that while the jury was properly instructed on the laws regarding self-defense and accident, because there was testimony at trial supporting both charges, there also should have been a jury charge on defense of habitation, and Newman's trial attorney was ineffective for failing to request a charge on that defense. The State now appeals to the Georgia Supreme Court.

**ARGUMENTS:** The State, represented by the District Attorney, argues the trial court erred in granting Newman's motion for new trial on the ground that the jury should have been charged on the defense of habitation and his attorney was ineffective for not requesting it. First, "there can be no claim of self-defense, justification, or defense of habitation, nor claim of immunity from prosecution where the defendant is engaged in an unlawful act at the time of the act," the State argues in briefs. "There is no dispute in this case that Appellee [i.e. Newman] was a convicted felon and that he chose to retrieve a firearm and bring it to Wood's home." Under Georgia law, a convicted felon may not possess a firearm. Newman had five prior felony convictions and was aware it was illegal for him to have a gun. "It is well-settled that a defendant may not claim that he was defending himself with a firearm in any way where he should not have had the firearm in the first place," the State argues. Furthermore, Newman was the initial aggressor and pulled out the firearm and threatened Wood. Newman admitted that when he retrieved the gun, neither Wood nor anyone else had made any threats toward him. In both his trial and motion-for-new-trial hearing, Newman never asserted self-defense or defense of habitation, claiming that the gun discharged accidentally. At no point did he admit doing the act, which is required for a justification defense. "The crux of Appellee's defense was that, whatever the victim's actions, Appellee never intended to pull the trigger," the State argues. "He received the appropriate charge tailored to the evidence and the trial court's granting of a new trial must be reversed."

Newman's attorney argues the trial court did not err in finding that he was denied effective assistance of counsel when his trial attorney "unreasonably and prejudicially failed to request a jury charge on defense of habitation and failed to object to the trial court not including that charge in its charge to the jury. While the evidence at trial was conflicting, the jury heard that Newman was sitting in the van when Wood charged at him and dove into the van before Newman fatally wounded him with a single shot. Trial counsel testified at the motion-for-new-trial-hearing that he had no strategic reason for failing to request the charge, and then went on to state, erroneously, that "The defense occurred in a car," and "I didn't think [defense of habitation] was an appropriate charge to give to the jury." Trial counsel then contradicted himself on cross-examination and stated that defense of habitation *can* involve a motor vehicle. Based on the trial attorney's contradictory answers, it is "clear that trial counsel failed to adequately research and understand the defenses available to his client," Newman's attorney argues. "It is respectfully submitted that the issue set forth above demonstrates that counsel made errors so serious that he was not functioning as the 'counsel' guaranteed each and every defendant by the Sixth Amendment" of the Constitution, and this error "was so serious as to deprive this defendant of a trial whose result was reliable." Therefore, the order granting Newman a new trial "must be affirmed," the attorney contends.

**Attorneys for Appellant (State):** Meg Heap, District Attorney, Matthew Breedon, Asst. D.A.  
**Attorney for Appellee (Newman):** Steven Sparger

**THE STATE V. BURNS (S18G1354)**

The State is appealing a Georgia Court of Appeals ruling that when a man goes on trial in **Cherokee County** for sexual crimes against his stepdaughter, her prior false allegation that another man had attempted to rape her won't be admissible.

**FACTS:** In March 2016, **James Phillip Burns** was charged with aggravated sexual battery, aggravated sodomy, and incest. The charges arose after Burns's wife discovered that her daughter – Burns's stepdaughter – had been in a “direct message” Twitter discussion with a friend in which she said her stepfather had sexually molested her in a July 2015 incident. In addition to details about Burns, the Twitter message included the following statement: “And my brother's best friend tried to rape me.” The message went on to say, “So I can relate to that. But I'm sorry all of that happened to you.” She later said in a videotaped forensic interview in reference to the statement that, “I just made that up, I guess.” She said she did not know why, and “there is a chance I may have been high.” The State subsequently filed a motion to exclude her statement at Burns's trial under Georgia's Rape Shield Statute (Georgia Code § 24-4-412), which prohibits evidence of an alleged victim's past sexual history. The trial court ruled that the prior false allegation was not subject to the rape shield law under the Georgia Supreme Court's 1989 decision in *Smith v. State*, in which the high court ruled that evidence of prior false allegations by a victim of sexual misconduct is admissible in a criminal case regarding alleged sexual misconduct. However, the trial court ruled in favor of the State based on Georgia Code § 24-4-403, which states that “Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....” The trial court therefore ruled that the prior false allegation was inadmissible.

The State appealed to the Georgia Court of Appeals, which reversed the trial court's ruling. The intermediate appellate court concluded that, “under the principles recognized in *Smith*, § 24-4-403 must yield to greater constitutional concerns” – specifically, “the defendant's right of confrontation and right to present a full defense.” The appellate court also found that the false-allegation evidence failed to create a “danger of unfair prejudice or confusion of the issue” under § 24-4-403. The State then asked to appeal to the Georgia Supreme Court, which agreed to review the case to answer several questions, including whether the high court's decision in *Smith* remains good law under the state's new Evidence Code and whether in a criminal proceeding involving alleged sexual misconduct, § 24-4-403 applies to evidence of prior false accusations of sexual misconduct made by the victim or a person close to the victim.

**ARGUMENTS:** The State, represented by the District Attorney's office, argues that the “false statement in question here is a snippet from a lengthy direct Twitter message the prosecuting witness sent to a victim of sexual misconduct deemed more severe than the conduct charged in the present case.” The Court of Appeals ruled that under *Smith*, § 24-4-403 “must yield to greater constitutional concerns” – specifically “the defendant's right of confrontation and right to present a full defense.” In cases in which the evidence “fails to establish the existence of any other specified person who can claim to have been falsely accused by the alleged victim of any actionable sexual misconduct whatsoever, as here,” the Georgia Supreme Court “has held that the confrontation-centric holding in *Smith* is not implicated.” In its 1992 decision in *Postell*

*v. State*, the high court ruled that a trial court did not err by excluding a victim's claim that she was raped previously by another man. In *Postell*, the state Supreme Court held that "the rule in *Smith v. State*, authorizing evidence of prior false accusations of rape in a rape trial, does not apply, and the evidence was not otherwise admissible." To "the extent *Smith* could possibly be read to suggest that purported 'prior false accusation' evidence put forward by the defendant is *always* admissible, one need look no further than *Postell* for clarification of the matter," the State argues. *Smith* "has no application whatsoever to an admitted false statement by the prosecuting witness that merely suggests the possibility that some vaguely-identified person may have performed an unspecified act that may or may not have amounted to criminal sexual misconduct depending on the nature of the wholly-omitted details," the State contends.

Burns's attorneys argue that the state Supreme Court correctly ruled in *Smith* that the rape shield law did not bar admission of prior false accusations of sexual misconduct. "This Court reasoned that the rape shield law bars testimony of a victim's 'past sexual behavior' and following other jurisdictions adopted the reasoning that *prior false allegations of sexual misconduct* is not the same as *past sexual behavior*," the attorneys argue in briefs. The *Smith* Court ruled that "a majority of jurisdictions that have considered the question have held that the evidentiary rule preventing evidence of specific acts of untruthfulness must yield to the defendant's right of confrontation and right to present a full defense." The ruling in *Smith* "on a constitutional basis was correctly decided," Burns's attorneys argue. Furthermore, the admissibility of prior false accusations of sexual misconduct is also allowed under the state's new Evidence Code. Under Georgia Code § 24-6-608 (b) (1) of the new Evidence Code, "a trial court may allow questioning about specific instances of conduct by a witness on cross-examination, if the conduct is probative of the witness's character for truthfulness or untruthfulness," the attorneys contend. "It is important to note that 'Georgia rule favors the admission of any relevant evidence, no matter how slight its probative value. Evidence of doubtful relevancy or competency should be admitted, and its weight left to the jury...' 'The exclusion of relevant evidence is an extraordinary remedy and should be used sparingly.'" "In researching this case before this Court and the Georgia Court of Appeals, Appellee [i.e. Burns] found no cases within this State where a proven prior false accusation of sexual misconduct was excluded solely based on § 24-4-403," the attorneys argue. "Appellee has a constitutional right under the United States Constitution and the Georgia Constitution to confront all witnesses called to testify against him and has the right to inquire into the prior false allegation of sexual misconduct made by this alleged victim. Appellee respectfully requests this honorable Court to affirm the ruling of the Georgia Court of Appeals."

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