



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

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**Tuesday, April 16, 2019**

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

#### **THE STATE V. TOWNS (S19A0557)**

The State of Georgia is appealing a **Telfair County** court's dismissal of the murder indictment against **Ronnie Adrian Towns** for the 2015 murders of Elrey and June Runion. In this highly publicized case, Towns is charged with luring the elderly couple to rural Telfair County from their Marietta home under the pretense of selling them a 1966 Mustang that Towns advertised on Craigslist. The State announced it would seek the death penalty. At issue in this appeal is whether the grand jury that indicted Towns was randomly chosen. The trial court determined it was not and dismissed the indictment.

**FACTS:** In March 2015, Towns was indicted on two counts of malice murder, four counts of felony murder, and two counts of armed robbery. In March 2017, his attorney filed a motion to dismiss the indictment "due to the unconstitutional composition of the grand jury." Georgia Code §15-12-66.1 states that when there is an insufficient number of persons available to complete the empaneling of grand jurors, "the presiding judge shall order the clerk to choose at random from the names of persons summoned as trial jurors a sufficient number of prospective grand jurors necessary to complete the grand jury." A grand jury must consist of a minimum of 16 persons and a maximum of 23. Although the trial court summoned 50 persons from the Telfair County Master Jury List to appear for the grand jury, fewer than 16 appeared. The trial judge subsequently ordered the Clerk of the court to summon persons from the trial jury

list to complete the grand jury, as prescribed by §15-12-66.1. The clerk later testified that four people were “randomly picked from the randomly selected list” of trial jurors, that she “randomly selected those names,” and that she did not randomly select them “for a reason.” If there was any reason, she said she “selected them because [she] thought they could get [to court].” The Clerk was able to contact four people from the trial jury list, and of those four who appeared, two were selected to serve on the grand jury. Ultimately, 23 persons served on the grand jury with 21 of those persons having been summoned originally for grand jury service and two of those persons having been drawn from the trial jury list. Following a hearing, the trial judge issued an order quashing the indictment. “Instead of randomly selecting names from the [trial] jury list, the Clerk of Court identified specific individuals that she personally knew, that she could readily contact, and that she believed would be readily available...,” the judge wrote in the order. “The Clerk of Court chose Tim Spires and Brad Williams purposefully and not at random as required by the statute.” The State now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the trial court properly dismissed the indictment after finding that the grand jury was not randomly selected under §15-12-66.1.

**ARGUMENTS:** The State, represented by the District Attorney, argues the trial court erred in quashing the indictment based upon its finding that the grand jury was not randomly selected. “Georgia law provides that when there is an insufficient ‘number of persons in attendance to complete the empaneling of grand jurors, the presiding judge shall order the clerk to choose at random from the names of persons summoned as trial jurors a sufficient number of prospective grand jurors necessary to complete the grand jury,’” the State argues in briefs. “Other than the phrase ‘at random,’ nothing in the statute, code, case law, or otherwise provides for how the clerk is to choose from the trial jurors in such a scenario.” The State points out that, “Importantly, the clerk’s computer system had already randomly selected the trial jury list from its master list. Therefore, the clerk was limited to that particular randomly selected list in choosing members for grand jury; i.e. it was not as if the clerk hand-picked people from her personal knowledge to come for grand jury, rather, she selected from the individuals who had been randomly selected by her computer for trial jury. The clerk testified that she randomly selected names from the list that she could get into contact with. To say that this defeats randomization in this context is to defy common sense,” the State contends. The State also argues that the trial court correctly found that the master jury list was representative of the community. Towns had challenged the master list for Telfair County based on the inclusion and exclusion of certain groups of people, but the trial court ruled against him on this issue.

Towns’s attorneys argue that the trial court properly dismissed the indictment after finding that the grand jury was not randomly selected under Georgia Code §15-12-66.1. “The randomness requirement of §15-12-66.1 is an essential and substantial safeguard in the jury selection process,” the attorneys argue in briefs. “Here, the clerk telephoned four individuals she knew personally from the trial jury list and asked them if they could serve as grand jurors. Two jurors declined the clerk’s invitation, but two more volunteered to serve as grand jurors. This non-random selection of four individuals from the trial jury list, compounded by the self-selection of two of those individuals based on their willingness to serve, destroyed the randomness of the selection process in violation of the statute.” The attorneys also argue that the state Supreme Court lacks jurisdiction to review the denial of a defense motion regarding the inclusivity of the grand jury list as that matter was decided in the State’s favor. “Here the State is bringing an issue that has already been resolved by a lower court in its favor. The State cannot

benefit from the issue being revisited by the Supreme Court of Georgia. Thus, the issue is moot, and the Court cannot validly rule on it,” the attorneys argue. “To the extent the State attempts to appeal issues which were decided in its favor, it has no right to appeal under Georgia Code §5-7-1, presents no present controversy, and seeks an advisory opinion. As such, this Court lacks jurisdiction and such matters are not properly before this Court.”

**Attorneys for Appellant (State):** Timothy Vaughn, District Attorney, Keely Pitts, Asst. D.A.

**Attorneys for Appellee (Towns):** Gabrielle Pittman, Nathaniel Studelska, Franklin Hogue, J. Travis Griffin

### **IN THE INTEREST OF M.F., A CHILD (S18G1338)**

In this appeal, a teenager is challenging the Georgia Court of Appeals’ dismissal of his appeal of his conviction and probation sentence for attempting to break into an automobile. The intermediate appellate court dismissed the case as moot because he had already completed his probation.

**FACTS:** The juvenile court of **Richmond County** first heard the case on May 11, 2017. Following a hearing, **M.F.**, who was 15 years old at the time, was “adjudicated” – or found delinquent – of the criminal act of attempting to enter an automobile with the intent to commit theft. The juvenile court ordered him to serve 12 months on probation. Through an attorney, M.F. attempted to appeal the delinquency adjudication to the Georgia Court of Appeals, arguing that the evidence against him was insufficient to prove his guilt beyond a reasonable doubt. M.F.’s probation expired on May 11, 2018. On May 22, 2018, the Court of Appeals dismissed M.F.’s appeal as moot “in view of the fact that, as of the date of this order, the Appellant’s [i.e. M.F.’s] twelve-month probationary sentence has expired.” The appellate court stated in its order that it declined to reach the merits of his appeal “because the defendant has not shown, on this record, any adverse collateral consequences arising from the juvenile court’s adjudication of his as delinquent.” M.F. now appeals the dismissal of his appeal to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals erred in dismissing his appeal as moot.

**ARGUMENTS:** Attorneys for M.F. argue the Court of Appeals was wrong to dismiss the appeal for three reasons: First, the appeal seeks to vacate the adjudication, not the “disposition,” which is different and was the probationary sentence that flowed from the adjudication. The attorneys argue that an adjudication in juvenile court is analogous to a criminal conviction and that the disposition is analogous to a criminal sentence. An adjudication persists even after the disposition has expired. “Appeals of adjudications are never moot,” the attorneys argue in briefs. Second, adjudications inherently have collateral consequences, the attorneys contend. An adjudication of delinquency may hinder future educational, employment, and even housing opportunities. “The United States Supreme Court has dismissed the notion that an appeal of a criminal conviction is moot merely because the sentence concluded, holding that every criminal conviction inherently has collateral consequences and these collateral consequences live on long after the sentence has expired,” M.F.’s attorneys argue. The Court of Appeals’ ruling that M.F. failed to show collateral consequences runs counter to the U.S. Supreme Court’s 1968 ruling in *Sibron v. New York*, which places the burden on the State to prove no possibility of collateral consequences. Third, M.F.’s appeal is not moot because even if it were moot to the parties in this case, there is an existing class of sufferers. “Any child adjudicated delinquent could suffer the same harm as the child in this matter, and the relatively short length of juvenile

dispositions would necessarily cause these cases to evade appellate review,” the attorneys contend. Finally, the Court of Appeals erred because dismissing M.F.’s appeal as moot violated his due process rights. M.F. has consistently denied the allegation against him and maintained his innocence. “For children adjudicated delinquent, appellate review plays a uniquely important role in safeguarding their constitutional rights because juvenile court is a court in which judges are appointed, juries do not exist, and proceedings are generally closed to the public,” the attorneys argue. “Without meaningful appellate review, constitutional rights become illusory – something promised but not provided.” The Georgia Supreme Court should reverse the appellate court’s dismissal of M.F.’s appeal, his attorneys urge .

The State, represented by the District Attorney, argues the Court of Appeals was correct in finding that M.F.’s case was moot. “The petitioner [i.e. M.F.] has failed to identify collateral consequences that survive the conclusion of his sentence,” the State argues in briefs. “The fact that this particular adjudication of delinquency may be used in a future prosecution should not be considered a collateral consequence.” M.F.’s attorneys inaccurately liken an adjudication of delinquency to a criminal conviction and a disposition to a criminal sentence. Georgia Code § 15-11-606 specifically states that, “An order of disposition shall not be a conviction of a crime and shall not impose any civil disability ordinarily resulting from a conviction....” Courts have consistently presumed that collateral consequences flow from a felony conviction, but in cases involving less serious misdemeanor offenses, “Georgia courts have declined to reach the merits of an appeal when there was no evidence of adverse collateral consequences stemming from the convictions,” the State argues, quoting the Georgia Supreme Court’s 2008 decision in *Turner v. State*. Unlike some serious delinquent acts, such as kidnapping or attempted murder, “other adjudications of delinquency, like the one in the present case – where the child’s delinquent act caused no injury or property damage, did not involve a firearm or drugs, and overall had no aspect to it that would shock the conscience of an average finder of fact – have less potential for far-reaching consequences upon the child’s career or later legal proceedings.” Finally, the State argues that this case does not present an issue that is capable of repetition. When he appealed to the Court of Appeals, M.F. raised only one issue – whether there was evidence to support his conviction for criminal attempt to enter an automobile. He argued there was conflicting evidence as to whether he had in fact lifted the door handle, and he claimed there was no evidence that he intended to commit a theft. “Without addressing the merits of these allegations of error, it is unlikely that they are capable of repetition, as the allegations of error are limited to the unique facts of this particular case,” the State contends, urging the Supreme Court to uphold the dismissal.

**Attorneys for Appellant (M.F.):** Gregory Gelpi, Katherine Mason

**Attorneys for Appellee (State):** Natalie Paine, District Attorney, Joshua Smith, Asst. D.A.

### **LANGLEY V. MP SPRING LAKE, LLC (S18G1326)**

A woman who sued the owner of her apartment complex after she slipped and fell on the property is appealing a Georgia Court of Appeals ruling that was in the owner’s favor.

**FACTS:** On March 3, 2016, **Pamela Langley** filed a lawsuit in **Clayton County** Superior Court against **MP Spring Lake, LLC**, which owned the Spring Lake Apartments in Morrow, GA where Langley lived. She alleged in her suit that on March 3, 2014 – two years earlier – she had gone outside to walk her dogs and as she was walking back to her apartment, she tripped or slipped on a crumbling section of the parking lot curb and fell to her knees.

Langley claimed Spring Lake was negligent because it had failed to repair the curb despite knowing it was defective. Georgia statutory law (Georgia Code § 9-3-33) provides a two-year statute of limitations for people to file personal injury claims. But Spring Lake asserted that Langley's claims were barred by the one-year limitation period contained in her lease, which would have required her to file suit by March 3, 2015. Specifically, the lease stated that "any legal action against Management or Owner must be instituted within one year of the date any claim or cause of action arises and that any action filed after one year from such date shall be time barred as a matter of law." On that basis, Spring Lake filed a motion asking the trial court to grant "summary judgment" in its favor, arguing that because Langley's lease contained a one-year limitations period for legal actions and she filed her complaint two years after the injury occurred, her claim was barred. (A court grants summary judgment when it determines there is no need for a jury trial because the facts are undisputed and the law falls squarely on the side of one of the parties.) The trial court granted Spring Lake's motion for summary judgment, concluding that the provision of the lease was enforceable. Specifically, the trial court ruled that Langley's personal-injury claims were barred because she filed suit after the expiration of the one-year contractual limitations period. Langley appealed to the Court of Appeals, but the intermediate appellate court upheld the trial court's judgment, ruling that the contractual limitations provision in Langley's lease applied to Langley's premises liability action. The appellate court found that under well-settled rules of contract construction, the provision's language was clear and unambiguous, which prevented it from being read to apply only to actions arising from the lease itself, as Langley urged. The Court of Appeals also rejected Langley's argument that the provision was unenforceable, because contractual-limitations-period clauses are enforceable in Georgia.

Langley now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether a residential lease containing a one-year limitations period for filing a premises liability action violates Georgia's "public policy," i.e. the principles and standards regarded by the legislature or the courts as being of fundamental concern to the state and the whole of society.

**ARGUMENTS:** Langley's attorney argues the Court of Appeals erred by ruling that the clause in her lease contract applies to her civil lawsuit against MP Spring Lake and also by ruling that the limitations clause is enforceable and does not violate the public policy of Georgia. The limitations provision in the lease only applies to causes of action that arise from the lease. Neither the Georgia Supreme Court nor any other court has held that a contractual limitations clause applies to actions not arising from the contract that contains the clause. "MP Spring Lake has cited cases approved by the courts where the rights sought to be limited by the contractual limitations provision only exist because of the contract," the attorney argues in briefs. "As such, contractual limitations clauses are enforceable in insurance contracts and business-to-business contracts, because without the underlying contract the right of action limited would not exist. Ms. Langley does not dispute the holding or validity of the cases cited by MP Spring Lake as they fall within the limited scope of applicability to rights arising from the contract itself. However, MP Spring Lake has failed to cite or present *any* case or precedent that a contractual limitations clause has any effect upon a stand-alone or statutory right unrelated to the contract between the parties." In this case, Langley did not bring suit arising out of the contract, the attorney argues. "Instead, she brought the suit based on statutory authority (i.e. § 51-3-1) and thus the contractual limitations clause simply does not apply to Ms. Langley's personal injury

case.” “The boilerplate legalese language regarding the limitations clause is in small print buried several pages into a multipage lease,” the attorney argues. “Fairness dictates that an unsuspecting lessee should not have to retain a lawyer to advise him on his or her legal rights when signing a residential lease. . . .” With this opinion, the Court of Appeals has “unnecessarily broadened the scope of contractual limitations clauses, thereby making new law that violated the clear intent of the Georgia Legislature to protect the right of access by residents to the state courts in Georgia.” The Georgia Supreme Court should reverse the decision by the Court of Appeals and reinstate Langley’s lawsuit in the trial court, her attorney urges.

Attorneys for MP Spring Lake argue that two courts, and a combined four judges, correctly ruled that the provision in Langley’s lease is valid and enforceable. “The Court of Appeals and the trial court recognized that parties are free to contract about anything they want, unless prohibited by statute or public policy, that the contractual limitations provision at issue in this case does not violate any statute or public policy, and that Georgia’s appellate courts have long approved of contractual limitations provisions that shorten statutory limitations periods,” the attorneys argue in briefs. “In fact, this Court has recognized for more than 150 years that the parties to a contract may shorten a statutory limitations period.” Spring Lake is entitled to summary judgment because Langley filed her complaint more than one year after her injury. Langley “voluntarily entered into a contract with defendant, and so she is bound by all of its terms, not just the ones she bothered to read or the ones that are favorable to her,” the attorneys argue. “She was required to file this case within one year of the incident, but she did not. The consequence of her failure to do so is that her claim is barred.” Therefore, the Supreme Court should uphold the judgment of the Court of Appeals.

**Attorney for Appellant (Langley):** Matthew Gebhardt

**Attorneys for Appellee (Spring Lake):** Sun Choy, Jacob Daly, Wesley Jackson

### **BANNISTER V. THE STATE (S19A0418)**

A man convicted of shooting and killing another man during a marijuana drug deal is appealing his convictions and sentence to the Georgia Supreme Court.

**FACTS:** According to the facts at trial, in September 2011, Ricardo Linton was living with his mother in a **Gwinnett County** townhome. Linton sold and use marijuana, which he regularly bought from **Donald Bernard Bannister**, also known as “N.O.” On Sept. 24, 2011, Linton received a call from someone who wanted to buy two pounds of marijuana, and he asked Linton to make the transaction through his cousin, Anthony Johnson, Jr., who went by “A.J.” Linton did not have the two pounds, so he called Bannister. Linton arranged to buy the drugs from Bannister for \$8,200 and then sell the drugs to Johnson for \$8,600. Linton asked both Bannister and Johnson to meet him at his townhome. Bannister arrived first and Linton led him to his bedroom on the ground floor to wait for Johnson. While sitting there, Bannister pulled out a gun, which he cocked and hid under a pillow on his lap, telling Linton, “you never know when somebody will try to rob you.” Johnson arrived with another man in his car, Terrance Denson, who Johnson explained would be buying one of the pounds and wanted to see the drug himself. Linton led Johnson and Denson to his room where Bannister was waiting. Linton showed Johnson and Denson the marijuana, and they pulled out the money, but it was obviously less than \$8,600. Linton asked to count the money, while Johnson and Denson asked to weigh the drug. As Linton walked toward the bathroom to get a scale, Denson suddenly pulled out a gun. Bannister charged Denson and the two began struggling over Denson’s gun. Meanwhile,

Johnson, who was unarmed, pushed Linton to the floor, then went over to help Denson. Bannister kicked Denson off him, then fired his gun at Johnson, hitting him once in the back of his shoulder at close range. The bullet transected Johnson's aorta, and he died at the scene. Bannister moved toward the bathroom while firing at Denson, who fled from the house with his gun. Before Bannister left the house with the marijuana, he told Linton to "take care of it" and "make it look like a robbery." After Bannister left, Linton called 911 and told officers that he was alone when three unknown men came into his room and demanded money. After he was confronted with evidence that contradicted the story, Linton eventually told police what had happened, i.e. that it was a drug deal gone bad and that Bannister had been there. Throughout, Linton characterized Bannister as a "hero" who had saved him and his mother. Linton, who later testified for the State, said that he had given several different versions of events because he was scared – of both Bannister and the consequences – and was trying to cover for himself and Bannister. Bannister called Linton 15 times after the shooting and told Linton the day of their preliminary hearing that he had burned his clothing, gotten rid of the gun, and painted his Volvo from white to black. After Bannister learned that Linton had told officers what he had said, Bannister threatened to kill Linton.

Following a December 2013 trial, Bannister was found guilty of felony murder based on aggravated assault, aggravated assault with a deadly weapon, and possession of a firearm or knife during the commission of a felony. He was sentenced to life plus five years in prison. Bannister now appeals to the state Supreme Court.

**ARGUMENTS:** Bannister's attorney for the appeal argues that Bannister's trial attorney and the trial court made numerous errors and he is entitled to a new trial. Among the errors, Bannister argues that his trial attorney rendered "ineffective assistance of counsel" in violation of his constitutional rights because the attorney withdrew his requests that the jury be instructed on the law of voluntary manslaughter, which is less serious than murder, and on the law of the defense of "mutual combat." When the lawyer told the judge he was withdrawing the requests, he said that it was because his client did not want those instructions given. While a client may decide fundamental matters relating to his defense, such as whether to accept a plea agreement or testify on his own behalf, certain decisions relating to the conduct of the case ultimately must be made by the attorney, Bannister's appeal attorney argues. In this case, the trial attorney did not take professional responsibility for the conduct of the case on strategic and tactical matters of the utmost importance, instead letting his client make an unreasonable decision. No reasonable lawyer with a built-in defense of self-defense and mutual combat, based on the testimony by the State's own witness that Bannister had been a "hero" who "saved lives," would allow his client to abandon these defenses. Among other errors, the trial court erred by admitting recordings of phone conversations from jail, and the weight of the evidence does not support Bannister's convictions, his attorney argues.

The State, represented by the District Attorney's and Attorney General's offices, argues that all five of Bannister's arguments are without merit and "must fail when evaluated under the appropriate standard of review applied to the facts of his case." Among them, Bannister received effective assistance of counsel at trial. The attorney's performance was not objectively unreasonable, but instead was a sound strategic decision undertaken after consulting with Bannister. Bannister has failed to show that his trial attorney's decision to withdraw his requests for two jury instructions was not based on Bannister's autonomous choice to maintain innocence rather than pursue a defense of self-defense, the State argues. Based on the record, Bannister

cannot show “that his trial counsel was doing anything other than respecting his desire to assert innocence rather than pursue a justification defense....” Bannister’s assertion that by withdrawing his jury charge requests on voluntary manslaughter and mutual combat, the trial attorney “abandoned” a “built-in justification” defense “is plainly wrong, and is defeated by a simple review of the appellate record,” the State argues. In response to some of Bannister’s other assertions, the State argues that the trial court did not abuse its discretion in permitting two recorded phone conversations to be admitted into evidence at trial. In response to another of Bannister’s arguments, the state Supreme Court does not have the authority to sit as a “thirteenth juror” and weigh the evidence on a motion for new trial that alleges general principles of justice and equity, the State contends. Only the trial court can do that.

**Attorney for Appellant (Bannister):** Bruce Harvey

**Attorneys for Appellee (State):** Daniel Porter, District Attorney, Samuel d’Entremont, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.

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

### **MOORE V. THE STATE (S19A0618)**

A man is appealing the **DeKalb County** murder conviction and life prison sentence he received for killing a teenager who complained about the marijuana the man had sold him.

**FACTS:** According to state prosecutors, the night of July 1, 2014, 16-year-old Delray Crittenden, Nyriek Williams, and Aaron Byfield went to a high school party in their neighborhood. While there, Crittenden said he wanted to buy some marijuana, so he called **David Frank Moore**. Crittenden and Williams then left with another partier who agreed to drive them to Moore’s house in Lithonia so Crittenden could get his marijuana. When they arrived, Crittenden gave Moore some money in exchange for the drug, and the three then returned to the party. Later, because Williams had a 1:00 a.m. curfew, Byfield agreed to drive him home. As they were leaving the party, Crittenden asked if Byfield could drive him back to Moore’s house before dropping off Williams. He said the marijuana he had purchased from Moore was “short” or “skinny,” and he knew that Moore would “make it right.” Byfield agreed, and Williams sat in the front passenger seat next to Byfield while Crittenden sat in back. On the way to Moore’s house, Crittenden spoke by phone to Moore who instructed the three to back the car into his driveway when they arrived. At about 1:30 a.m., Moore came outside and spoke to Crittenden. Their conversation became heated, although neither Byfield nor Williams could remember exactly what they said. Suddenly, Moore started firing a .38 revolver into the car, hitting all three. Byfield attempted to drive away but lost control of the car and ended up in a neighbor’s yard. Crittenden managed to get out of the car and run to a nearby house for help. The owner called 911 and watched as Crittenden collapsed and tried to crawl away from Moore, who was standing nearby with a gun. Byfield and Williams were wounded but survived; Crittenden died after being transported to Grady Memorial Hospital. Police later found Moore’s revolver nearby in some grass.

Following a 2015 jury trial, Moore was convicted of felony murder, aggravated assault, possession of a firearm by a convicted felon, and other crimes. He was sentenced to life plus 55 years in prison and now appeals to the Georgia Supreme Court.

**ARGUMENTS:** Moore’s attorney argues the evidence was insufficient to support the jury’s verdict and the trial court made a number of errors, all of which resulted in Moore being denied a fair trial. “The evidence presented to the jury was not sufficient to enable a rational trier of fact to find Appellant Moore guilty beyond a reasonable doubt on any of the convicted charges,” the attorney argues in briefs. Among the many trial court errors, the court erred by refusing to “bifurcate” – or split off – the offense of Possession of a Firearm by a Convicted Felon from the offense of Felony Murder. “The charge of possession of a firearm by a convicted felon is inherently prejudicial because the indicted language for that offense contains details of a prior felony conviction,” the attorney argues. Instead, the jury first should have heard evidence about the more serious charges of murder, aggravated assault, and possession of a firearm during the commission of a felony before considering the possession-by-a-convicted-felon charge. “Failure of the court to bifurcate said charges resulted in exposure to Appellant Moore’s previous conviction being unjustly exposed to an improper basis upon which the jury could decide the case.” The trial court also erred in instructing the jury to consider the “intelligence” of witnesses when assessing their credibility. And the trial court erred in refusing to instruct the jury about the defendant’s sole defense, which was that he was justified in shooting Crittenden to defend himself. “The court refused to charge the jury on self-defense due to its misinterpretation of the law and prejudice toward Appellant Moore,” the attorney argues. “The court was incorrect in its finding that justification was unavailable to Appellant Moore because ‘he’s selling marijuana to kids or young people in his neighborhood, at his home, with a gun in hand.’” Moore also received “ineffective assistance of counsel” from his trial attorney, in violation of his constitutional rights, his attorney for his appeal argues. The trial attorney was ineffective on a number of fronts, including by failing to honor Moore’s right to be present at critical stages of the criminal proceeding and by failing to “present any evidence in support of a defense,” Moore’s attorney contends.

The State, represented by the District Attorney’s and Attorney General’s offices, argues that the evidence “was more than sufficient to authorize the jury to convict Appellant of all charges.” Both Byfield and Williams testified that they had gone to Moore’s house so Crittenden could purchase marijuana from him, that they saw Moore standing by the car where the victim was sitting, and that they heard shots before being shot themselves. The trial court properly refused to bifurcate the felon-in-possession count, which was the basis or “predicate felony” for one of the felony murder charges. The trial court did not abuse its discretion by charging the jury to consider the intelligence of the witnesses when instructing it on witness credibility. And the trial court properly refused to instruct the jury on Moore’s justification defense. That charge was not available to Moore as “no evidence supported the theory that he was justified in shooting the victim,” the State argues. Finally, Moore’s trial attorney was effective and Moore has failed to carry his burden of proving otherwise.

**Attorney for Appellant (Moore):** Dwight Thomas

**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., Scott Teague, Asst. A.G.

**HOLMES V. THE STATE (S19A0559)**

A young man convicted in **Richmond County** of shooting and killing another young man who wouldn't give him a ride is appealing his murder conviction on the ground that prosecutors failed to prove venue.

**FACTS:** On the night of March 7, 2007, 21-year-old Cory Joseph went to work at Castleberry Foods, driving a 1986 Oldsmobile Cutlass. Earlier that day, **De'Andre Holmes**, who was 18 or 19, and his friend, Settron Bell, had gotten a ride and left Waynesboro, where Holmes lived, for Augusta to visit Bell's cousin. According to state prosecutors, Holmes also had been distraught over his breakup with his girlfriend and was anxious to visit her at the Walmart where she worked. Bell later said that he and Holmes were at a BP gas station on Deans Bridge Road in Augusta when they encountered Joseph and asked for a ride to the Walmart. Bell and Holmes climbed into Joseph's car, but Joseph said he could only take them part of the way as he had to get to work. According to Bell, at some point during the ride, Joseph told them he couldn't take them any farther. Bell said he then heard a gunshot and Joseph ran off the road and crashed the vehicle into a storage shed belonging to Cynthia Wilkins. Wilkins, who lived in Richmond County on North Kensington Drive, heard the crash and yelled for her daughter to call police. She saw one man run from the car but went out and tried to get Holmes to sit down, as he appeared hurt and had a spot of blood on his shirt. He told her he was "all right" and then he also ran off. Her neighbor then found Joseph's body in the driver's seat. He appeared to have been shot once in the back of the head and was not responsive. A medical examiner later testified that Joseph had died from a "contact gunshot wound" to the head, meaning someone had pressed the muzzle of the weapon against the skin of his head before discharging it. A little more than a month later, a confidential informant called the Richmond County Sheriff's Office, and police were able to locate Bell and Holmes in Burke County, where Waynesboro is located. In a letter to Joseph's mother a year later, Holmes wrote that, "I know you're looking for answers to what happened but I've just recently gained courage to write you this letter." He told her that although he had shot Joseph, it had been an accident.

A grand jury indicted Holmes for malice murder, felony murder, and possession of a firearm during the commission of a crime. Following an August 2008 trial, Holmes was convicted of all counts and sentenced to life plus five years in prison. Holmes filed a motion requesting a new trial, but the court denied his motion in July 2015. Holmes now appeals to the state Supreme Court.

**ARGUMENTS:** Holmes's attorney argues that the trial court erred in denying his motion for a new trial because the State failed to prove venue. Venue is the proper or most convenient location for a trial to be held. In a criminal case, it is usually the judicial district or county where the crime was committed. "In Georgia, our state Constitution requires that venue in a criminal case be laid in the county in which the crime was committed," Holmes's attorney argues in briefs. "This is not a mere procedural technicality, but rather a jurisdictional requirement. Venue is an essential element of the offense, and the State must prove it beyond a reasonable doubt at trial. Here, the State failed to present any evidence that the crime in this case occurred in Richmond County." Therefore, Holmes's conviction should be reversed, the attorney argues. The trial court also erred by failing to use its discretion in deciding the motion for new trial and instead relying on an inappropriate legal standard, the attorney contends.

The State, represented by the District Attorney's and Attorney General's offices, argues that the trial court properly denied Holmes's motion for new trial because there was sufficient evidence of venue. "Venue is a jurisdictional fact and is an essential element that the State must

prove beyond a reasonable doubt,” the State argues in briefs. “The State may establish venue by whatever means of proof are available to it and may use both direct and circumstantial evidence.” Georgia Code § 17-2-2 (c) states that a criminal homicide “shall be considered as having been committed in the county in which the cause of death was inflicted,” and if it cannot be determined in what county the cause of death was inflicted, “it shall be considered that the cause of death was inflicted in the county in which the dead body was discovered.” “When the evidence is unclear as to exactly where the death occurred, this Court has held that the county in which the body is found is the proper venue,” the State argues. “Further, when a crime is committed in a vehicle travelling within the state, and it cannot readily be determined in which county the crime was committed, it is considered to be committed in any county in which the crime could have been committed through which the vehicle has traveled.” Here, Holmes himself conceded that the shooting was committed in a moving vehicle and that the victim’s body was found at Wilkins’s home. Wilkins testified that her house was in Richmond County. The State sufficiently proved venue as to the murder in this case. The State also contends that the trial court properly exercised its discretion as the “thirteenth juror” in denying the motion for new trial.

**Attorney for Appellant (Holmes):** Charles Jones, Jr.

**Attorneys for Appellee (State):** Natalie Paine, District Attorney, Joshua Smith, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paul Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.

### **THE STATE V. COLEMAN (S19A0603)**

The State is appealing a **Fulton County** court ruling transferring to juvenile court the case of a young man who was 16 years old when he was arrested and charged with felony murder and burglary. The judge made the ruling based on the State’s failure to formally indict the youth within the time period prescribed by statute.

**FACTS:** On Feb. 2, 2016, the United States Marshal’s Office arrested **Vas Coleman**, then 16, on Fulton County arrest warrants at his home in Huntsville, AL. The warrants alleged that Coleman had participated with others in the December 2015 burglary and murder of Jose Raman Greer. Coleman was released on a \$60,000 bond on March 29, 2016 from the Fulton County Youth Detention Center and has remained out on bond since. The next month, on April 8, 2016, a grand jury formally indicted Coleman and his four adult co-defendants on burglary and felony murder charges under Indictment No. 16SC142680. On March 20, 2018 – nearly two years later – the State re-indicted Coleman and the co-defendants on the same charges under Indictment No. 18SC158229. On Sept. 17, 2018, the State nolle prossed – or essentially dismissed – the first indictment, leaving only the second.

On Sept. 24, 2018, Coleman’s attorney filed a motion to have his case transferred from Fulton County Superior Court to Fulton County Juvenile Court on the ground that Indictment No. 18SC158229 was returned more than 180 days after Coleman was first detained, in violation of Georgia Code §17-7-50.1 (a). The statute says that, “Any child who is charged with a crime that is within the jurisdiction of the superior court, as provided in Code Section 15-11-560 or 15-11-561, who is detained shall within 180 days of the date of detention be entitled to have the charge against him or her presented to the grand jury.” The statute further states that, “The superior court shall, upon motion for an extension of time and after a hearing and good cause shown, grant one extension to the original 180 day period, not to exceed 90 additional days. If

the grand jury does not return a true bill against the detained child within the time limitations set forth in subsection (a) of this Code section, the detained child's case shall be transferred to the juvenile court....” (Under Georgia Code § 15-11-560, superior courts have original jurisdiction over the trial of any child 13-to-17 years old who is charged with any of eight crimes, one of which is murder.) The trial court noted that under the Georgia Court of Appeals 2012 decision in *State v. Armendariz*, a re-indictment of charges that originally were indicted on time, was not an exception to the 180-day time limit. The trial court agreed with Coleman, granted his motion, and transferred the case to Fulton County Juvenile Court. The State now appeals to the Georgia Supreme Court.

**ARGUMENTS:** Represented by the Attorney General's office, the State argues the trial court erred in transferring Coleman's "properly indicted case" from superior court to juvenile court. "The new indictment was a superseding indictment and an extension of the original indictment," the State argues in briefs. The trial court, in transferring the case, erroneously relied on the *Armendariz* decision, which is inapplicable in this case. The purpose of the 180-day deadline is to "notify juveniles of serious pending charges." Here, the "notice requirement was met with the first timely indictment," the State argues. Coleman knew he was facing two charges, and he was not languishing in jail while the State perfected the indictment. "So, there is no issue of undue incarceration of a minor or lack of notice to the defendant," the State contends. The State claims it re-indicted Coleman and the others simply to correct a clerical error. Such an error "does not give rise to a case even requiring a reset, let alone transferring a case to another jurisdiction." Upholding the trial court's ruling would lead to "legal absurdities," the State also argues. If the lower court were upheld, the State would never be able to fix mere clerical errors. "Second, the State would be precluded from filing not only superseding indictments, but indictments with additional charges newly discovered after the 180-day period but arising from the same series of events," the State argues. "While the transfer to juvenile court is not a dismissal of the charges, the drastically reduced punishment for serious crime functions as a dismissal, even if the juvenile is adjudicated guilty," the State contends.

Once charged as adults, children are not entitled to the protections afforded them by the juvenile system, Coleman's attorney points out. "Instead, they are held responsible in a criminal courtroom – as if they were adults – for knowing the law and not violating it, well before the child may actually be capable of doing so." By re-indicting Vas more than 180 days after first detaining him in connection with an alleged burglary and murder, the State deprived the superior court of its jurisdiction over the charges under §17-7-50.1, and the trial court correctly transferred his case to juvenile court. The attorney disputes the State's assertion that the purpose of re-indicting Coleman and the others was merely to fix a clerical error by removing the middle name from one of the co-defendants. During a hearing on the motion to transfer the case, the prosecutor admitted that the State's true motivation for re-indictment was because of "issues that came up with regard to the proffer." The State's assertion of a mere clerical error is "incredible" and "disingenuous" when its "characterization of the basis for the re-indictment is actually an attempt to minimize the State's own role in the series of errors from which it now seeks the Court's relief." Georgia law is clear that the 180-day time limit is mandatory, as evidenced by the word, "shall," the State contends. "Moreover, with respect to a criminal statute, where the statute is ambiguous and open to one or more reasonable interpretations, 'it must be construed *strictly against criminal liability*, and *in favor of* the individual facing criminal liability.'" The Court of Appeals had held that the Georgia legislature amended §17-7-50.1 in 2006 "to provide

for juvenile justice reforms” and “to provide for procedures related to *jurisdiction* and indictment for children charged with crimes within the jurisdiction of the superior courts.” Like other jurisdictional statutes, §17-7-50.1 requires that action be taken within a specified time or jurisdiction is lost, the State argues. “Therefore, the jurisdictional rule prescribed by the statute is clear and absolute: The superior court has no jurisdiction over an indictment against a juvenile obtained more than 180 days after the date of the juvenile’s detention, unless the provisions of §17-7-50.1 for a single, 90-day or less extension are met by the State.” The State did not make any such motion for an extension of time. Here, the State is urging the Supreme Court “to create a whole new basis for superior court jurisdiction over juveniles, in conflict with clear law the Georgia legislature has already passed on the subject,” Coleman’s attorney contends. Finally, upholding the trial court’s decision would not result in any “legal absurdities.” The State’s examples of these alleged “absurdities” “share a consistent theme with the State’s other arguments: The State would like this Court to amend §17-7-50.1 to give it more leeway in fixing its own errors, to be sloppy and less diligent, and to exercise less care when it comes to the juveniles that it seeks to treat as adults,” Coleman’s attorney contends.

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

**Attorney for Appellee (Coleman):** Tanya Miller