Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, June 18, 2019

10:00 A.M. Session

GLYNN COUNTY SCHOOL DISTRICT V. BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION (S19A0819)

The **Glynn County School District** is appealing a court decision ordering it to pay the local water and sewer commission more than $139,000 in water and sewer debt recovery charges.

FACTS: Prior to 2008, the City of Brunswick and Glynn County separately provided water and sewer services to people and businesses throughout the county, including to the school district's various buildings and properties. In 2006, the Georgia General Assembly created the **Brunswick-Glynn County Joint Water & Sewer Commission** for the purpose of providing water and sewer services for both the city and county. The enabling statute authorized the commission, "…to provide capital to expand facilities; to maintain, replace, or expand existing facilities; to provide a reasonable reserve for operations; to fund bond sinking funds; or to fund sinking funds for other debt of the county or the city incurred to provide capital portions of their water or sewer system." Beginning in 2008, the joint commission, rather than the city and county, assumed all responsibility for the provision of water and sewer services. Since its inception in 2008, the joint commission included in its bills to all customers, including the school district, amounts for water and sewer debt recovery charges. From 2008 until Sept. 1, 2014, the

school district paid the full amount of its bills, including the debt recovery charges. Beginning in September 2014, however, the school district quit paying those charges, although it continued paying the other charges in its bills. The school district argued that it was prohibited from paying the debt recovery charges because the purpose of the additional assessment – or "impact fee" – was to make payments on debt for capital improvements already built by the water and sewer commission and to build a reserve to be used for similar capital improvements in the future. The Georgia Constitution and Georgia Code of statutory laws confine expenditure of school tax funds to educational purposes, the district contended.

After the school district stopped paying for water and sewer debt recovery charges, the commission sued the school district to collect $139,494.54 in unpaid charges. The commission also sought a ruling from the court that the school district was not prevented by Georgia statute or constitution from paying the charges. The school district filed a counterclaim seeking to recover the charges it had previously paid to the commission. Both parties subsequently filed motions asking the court for "summary judgment." (A judge grants summary judgment after determining there is no need for a jury trial because the facts are undisputed and the law fairs squarely on the side of one of the parties.) The trial court granted the commission's motion for summary judgment, found that the school district was not constitutionally or statutorily prohibited from paying the associated debt recovery fees, and ordered the school district to pay the commission the total amount of debt recovery fees it had accrued since it stopped paying them in September 2014. The school district now appeals to the Georgia Supreme Court.

ARGUMENTS: "The Commission's responsibility is to provide water and sewer services and improve its facilities for all citizens and customers in Glynn County," the school district's attorneys argue in briefs. "The School District has the completely different responsibility of educating children in the County." The debt recovery charges are "***not*** for the actual water or sewer services used in the schools and buildings operated by the District," the attorneys argue. "Instead, they are admittedly to pay for capital improvements to provide for water and sewer services for the entire county." The school district is barred from paying the charges by the Georgia Constitution and by Georgia Code § 20-2-411, "both of which confine expenditure of school tax funds to educational purposes." The Georgia Supreme Court's 1994 decision in *DeKalb County School District v. DeKalb County* "prohibits tax funds dedicated to the educational purpose from being used for another governmental purpose, such as paying for water and sewer improvements," the attorneys contend. In its *DeKalb* decision, the high court "unambiguously held that a school district is constitutionally prohibited from using school tax funds for road improvements even if those improvements ***were necessary*** to make the road safe for students and area residents in light of a new school being constructed. If a school district cannot directly pay for road improvements, it certainly cannot directly pay for water and sewer improvements," the school district's attorneys argue. The Glynn County Superior Court also erred in concluding that the debt recovery charges were not impact fees. Under Georgia Code § 20-2-261 (d), which prohibits the imposition of impact fees on boards of education, the school district is exempt from paying the charges. "Clearly, the debt recovery charges are based on a formula measuring the 'impact' that a customer is perceived to have and not on any measurement of actual usage," the attorneys argue. Finally, the school district cannot use school tax funds to pay off the commission's long-term debt incurred for capital improvements.

Attorneys for the Brunswick-Glynn County Joint Water and Sewer Commission argue that the superior court did not err in ruling that the school district is not constitutionally or statutorily prohibited from paying the debt recovery charges. "Water and sewer services are essential to the operations of educational facilities," the attorneys argue in briefs. "Therefore, payment of the charges is an expenditure of school funds for an educational purpose, specifically, the maintenance and operation of educational facilities." The courts have "unequivocally and consistently held that 'educational purpose' is broad enough to cover all things necessary or incidental to the furtherance of education." The court also did not err in concluding that the charges are not impact fees and the school district is not exempt from paying them. Georgia Code § 20-2-261(d) does state that, "A local board of education shall be exempt from…county and municipal impact fees." "Contrary to the District's contention, however, the debt recovery charge is not an 'impact fee' under Georgia law and, therefore, the District is not exempt from paying it." Under the law, "impact fees" are payments "imposed upon development *as a condition of development approval* to pay for a proportionate share of the cost of system improvements needed to serve new growth and development." The debt recovery charge is not an impact fee, the attorneys contend. And the trial court did not err in concluding that the monthly debt recovery charges are not debts beyond a calendar year which the school district cannot incur without voter approval. Therefore, this Court should uphold the trial court's order granting summary judgment to the water and sewer commission, its attorneys contend.
Attorneys for Appellant (District): Hieu Nyuyen, Phillip Hartley
Attorneys for Appellee (Commission): Charles Dorminy, Steven Bristol

COLLIER V. THE STATE (S19A0658)

A man who initially represented himself is appealing a **Macon County** court's denial of his motion to appeal the murder conviction and life prison sentence the court entered following the man's guilty plea. He filed his motion to appeal long after the deadline to do so.

FACTS: According to prosecutors for the State, **Cordalero Collier** was dressed in all black and wearing a ski mask when, in the early morning hours of Aug. 7, 2008, he entered Shanika Walker's home where she, her sister, and a child were sleeping. Collier shot Walker twice and stabbed her 14 times, killing her. Collier also stabbed Walker's sister more than 30 times, but she managed to escape from the house. He chased her down the street where the driver of a van saw her fall and stopped. Collier came up from behind and, in front of the witness, continued to stab her. He discarded his clothes in the street, and DNA analysis later determined the blood on Collier's clothes was Walker's and her sister's. The DNA analysis also confirmed it was his hair in the discarded ski mask.

On Nov. 10, 2008, the Macon County grand jury indicted Collier for malice murder, felony murder, aggravated assault, and weapons charges. On Sept. 9, 2009, Collier entered a negotiated plea bargain in which he pleaded guilty to felony murder in exchange for the State agreeing not to prosecute the malice murder and other remaining charges. Collier was represented by attorney Charles Jones, who was present for the plea and endorsed it. The court subsequently sentenced Collier to life in prison. Nine years later, on Oct. 1, 2018, Collier filed a motion for an "Out-of-Time Appeal," which is a late appeal filed after the 30-day deadline from his guilty plea. Representing himself "pro se," i.e. without a lawyer, Collier alleged that his guilty plea was involuntary and that he had not been "informed that intent to cause the victim's

death was an element of felony murder." He also claimed that he had received "ineffective assistance of counsel" from his attorney in violation of his constitutional rights because his attorney refused to file a motion to withdraw his plea within the required time frame. He also claimed his attorney had failed "to adequately inform him of his right to appeal his plea conviction…." On Dec. 20, 2018, the trial court denied the motion without a hearing. Collier now appeals to the state Supreme Court.

ARGUMENTS: Attorneys from the Georgia Public Defender Council who represent Collier argue that this Court should vacate the trial court's order denying Collier's motion for an out-of-time appeal and remand the case for a hearing to determine whether he is entitled to the late appeal and to an out-of-term motion to withdraw his guilty plea. "A defendant whose appeal of right is frustrated by counsel's constitutionally deficient performance may take an appeal out-of-time," his attorneys argue in briefs. "To secure that remedy, a defendant who 1) had a right to appeal need show only 2) that counsel performed deficiently with regard to that right and 3) that but for counsel's deficient performance, there is a reasonable probability he would have exercised that right. In no case does a grant of relief require a defendant to show what grounds he would have raised on appeal or that those grounds would have won the day." Collier had the rights to file a motion to withdraw his plea and then to appeal the judgment on his guilty plea. But he claimed that his plea attorney disregarded his instructions to do so. "If proven, those averments would demonstrate both 2) that counsel's performance was constitutionally deficient and 3) that but for counsel's deficient performance, there is a reasonable probability that Collier would have appealed or sought to withdraw his plea," the attorneys argue. "Collier was entitled to a hearing where he could prove his assertions."

The Attorney General's office, representing the State, agrees that this "case should be remanded to the trial court for a hearing on Appellant's [Collier's] motion for an out-of-time appeal to determine whether Appellant's right to a direct appeal from his guilty plea was frustrated by his counsel." Collier's case was docketed in the Georgia Supreme case one day after this Court issued its 2019 opinion in *Ringold v. State.* In that opinion, this Court adopted the analysis of the U.S. Supreme Court in *Roe v. Flores-Ortega.* "To determine if counsel was ineffective for not filing a timely notice of appeal, a court must first determine if counsel consulted with the client about an appeal and, if so, acted in accordance with the client's preference or, if not, whether the failure to consult was deficient, the Attorney General's office argues. Under the U.S. Supreme Court's 1984 decision in *Strickland v. Washington*, "a defendant does not have to identify potential issues he would have raised on appeal but simply show that he was denied an appeal due to counsel's deficient performance, and the remedy is an out-of-time appeal." The Georgia Supreme Court instructed the parties in this case to assess what impact, if any, its decision in *Ringold* and the U.S. Supreme Court's decisions in *Roe v. Flores-Ortega* and *Garza v. Idaho* have on Collier's case. In response to the Court's question, the Attorney General "has reevaluated his position" and determined that the case should be "remanded to the trial court for a hearing on Appellant's motion for out-of-time appeal…." The Attorney General "joins with Appellant in asserting that Georgia case law and statutes provide a statutory right to appeal from a guilty plea." However, "the question of whether he had the right to withdraw his guilty plea is not properly before this Court," the State contends. That is because Collier did not file an out-of-term motion to withdraw his guilty plea; he filed a motion for out-of-time appeal. "Alternatively, Appellee [the State] submits that Appellant no longer has a right to withdraw his

guilty plea, as the term of court in which his plea was entered has long expired, and this Court should decline to create an exception to this long-standing rule."

The District Attorney's office, also representing the State, argues that the lower court's ruling should be upheld by the state Supreme Court. "The State does not dispute that a defendant who has been wrongfully denied an appeal of right due to the deficiency of counsel is entitled to a remedy," the lawyers argue in briefs. "The question now is what that remedy should be." "The State further accepts the principle that a defendant whose appellate rights have been frustrated due to the ineffectiveness of counsel – even after a guilty plea – is entitled to a meaningful remedy. The appropriate remedy, however, is not a motion in the trial court for an out-of-time appeal." "The better remedy is to require a defendant who does not file a timely appeal to pursue his request for an out-of-time appeal through the habeas corpus process." (Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated.) "Requiring a late-filing defendant to pursue his claims in this manner promotes stability and finality in the criminal justice system," the District Attorney's office argues. "The jumbled process now in place for pursuing an out-of-time appeal should be set aside in favor of a return to the original procedure. This matter languished for nine years with Appellant taking no meaningful action to contest the validity of his plea or the efforts of his counsel. He obtained generous consideration in exchange for his plea in the dismissal of numerous other charges that might have extended his sentence significantly. He, and others so situated, can find – or should have found – their remedy in a habeas corpus proceeding."

Attorneys for Appellant (Collier): Cordalero Collier (pro se), Brandon Bullard, Veronica O'Grady

Attorneys for Appellee (State): Lewis Lamb, District Attorney, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

HERON LAKE II APARTMENTS, LP, ET AL. V. LOWNDES COUNTY BOARD OF TAX ASSESSORS (S19A0975)

Owners of apartment complexes that provide low-income housing are appealing a **Lowndes County** judge's order declaring as unconstitutional 2017 amendments to state law that lowered their tax burden. At issue is whether tax assessors may consider tax credits given to low-income housing properties when determining a property's value for the purpose of taxing it.

FACTS: Heron Lake II Apartments, LP is one of eight partnerships that own and operate affordable apartment complexes in Lowndes County that rely on low-income housing income credits. All are eligible to receive federal and state low-income housing tax credits under Section 42 of the federal Internal Revenue Code and Georgia Code section 48-7-29.6. Under the program, private developers agree to rehabilitate or build rental properties and then lease a set number of units to low-income tenants at below-market rents. In return, they receive a 10-year award of tax credits, which are used to offset a developer's federal income tax liability. For the last several years, the **Lowndes County Board of Tax Assessors** has appraised the partnerships' state and federal tax credits by using the "income approach" appraisal method. According to the partnerships, the "income approach" bases the value of a property on the income it can produce. Some appraisers have used as an alternative the "sales comparison" approach, which compares recent sales of properties that have similar characteristics to the subject property to arrive at an

appraisal value. Both approaches increase the tax burden on the properties. In 2017, the Georgia General Assembly passed House Bill 196, preserving the right of tax assessors to consider the tax credits but seeking to limit the appraisal methods.

In the fall of 2017, Lowndes County filed a lawsuit asking the court to declare that 1) the 2017 amendments were unconstitutional because they create a subclass of tangible property, and 2) the tax credits do in fact result in "actual income to the record holder of title to the property" under Georgia Code § 48-5-2 (3) (B) (vii). In November 2018, following a hearing, the trial court ruled in the tax assessors' favor. It found that the statute was unconstitutional because it "exempts Section 42 tax credits from consideration under the sales approach, in violation of the taxation uniformity provision of the Georgia Constitution; second, the statute "does not exempt Section 42 tax credits from consideration under the income approach;" and third, if the statute were construed to exempt tax credits from consideration under the income approach, this too "would violate the taxation uniformity provision." Herron Lake and the other developers now appeal to the Georgia Supreme Court.

ARGUMENTS: Attorneys for the complex owners argue the trial court made four errors, including that it was wrong to find that the credits are "actual income" to the record title holders of the properties under Georgia Code § 48-5-2 (3) (B) (vii) (II). "There are two main issues at stake in this appeal," the attorneys argue in briefs. "First, the Court must decide if the tax credits 'generate actual income to the record holder of title to the property.' Second, the Court must decide if the General Assembly is prohibited by the Georgia Constitution's Tax Uniformity Clause from limiting assessors' use of inaccurate methods when valuing properties. The answer to both of these questions is 'no.'" As to the first question, "tax credits are offsets to tax liability, not income," the attorneys argue. "When someone receives income, they receive 'new' money that was not previously theirs. When they use a tax credit, they keep more of the money they have already earned." As to the second question, the General Assembly has the authority to prohibit use of improper appraisal methods by tax assessors. "This is a policy decision, and so sits within the core of legislative power." Restricting the use of certain methods does not offend uniformity, the attorneys argue. "The General Assembly properly limited the use of the sales comparison approach," the attorneys argue. The General Assembly also "appropriately limited the use of the income approach to value the tax credits." The Supreme Court should reverse the trial court's judgment and rule that the State may prohibit improper ad valorem tax appraisal methods.

Attorneys for the County argue that Section 42 tax credits do indeed generate "income." The ordinary meaning of "income" is a "gain or <u>recurrent benefit</u> that is usually <u>measured in money</u> and <u>for a given period of time</u>," the attorneys argue in briefs. The flaw with the developers' argument is that it is "based on construing the word 'income' to be restricted to income <u>subject to federal income taxes.</u> Not all income is 'taxable income.'" Among other arguments, the trial court also correctly ruled that Georgia Code § 48-5-2 (3) (B) (vii) (I) violates the taxation uniformity provision, the County's attorneys argue. And the trial court was authorized to issue a declaratory judgment under Georgia Code § 9-4-2, which states that "superior courts have the power to declare rights and legal relations of any interested party upon petition a) in cases of actual controversy and b) in any civil case in which it appears to the court that the ends of justice require the declaration should be made," the attorneys contend.

Attorneys for Appellants (Heron Lake et al.): Roy Barnes, John Bartholomew

Attorneys for Appellee (County): Walter Elliott, William Elliott

2:00 P.M. Session

<u>JACKSON V. THE STATE</u> (S19A0937)

A man is appealing his conviction in **Chatham County** for his part in the murder of a woman during a shoot-out between two groups of people.

FACTS: In February 2017, **Javon Tyler Jackson** was indicted with co-defendant Rodney Tyrone Smith, Jr. (aka "Na-Na") for malice murder, felony murder, possession of firearm by a convicted felon, and aggravated assault for the murder of Stephanie Monique Smith, who was shot and killed while riding in a black SUV driven by Ebony Washington. The State's case rested largely on the statements of witnesses, Deonshae Campbell, who was 17 years old, and her sister, Dionysha Hearns. They spoke to police immediately following the shooting as they were at their home near the intersection of 32nd Street and Jefferson Street in Savannah where the shooting occurred on Aug. 20, 2016. Their statements were recorded and later played to the jury. A key issue at trial was identification since neither the surviving victim nor the other witness in the vehicle in which Stephanie Smith was shot was able to identify a shooter at trial. In their initial statements to police, Deonshae Campbell and Dionysha Hearns said that immediately following the shooting, Jackson and Smith ran into their mother's home carrying firearms. Campbell said the shooting followed a drug-related robbery after one group of young people robbed another, and the second group then robbed the first in retaliation. Campbell said the young men on the corner sold crack. She told police that while driving, Ebony Washington had fired a shot from the SUV toward the guys on the street corner near her home. One of the guys in the line of fire was "Na-Na" Smith. Believing this made him look like a "punk," Smith then made plans with Jackson and the others on the street corner to shoot back at the SUV the next time they saw it. The opportunity came on Aug. 20, 2016 when Smith and his friends spotted the SUV and running after it, fired their guns, hitting Stephanie Smith in the head, killing her, and wounding another young woman in the car. In all, 30 shell casings were collected from the scene. Of the 30, 29 were 9 millimeter casings and one was a .40 caliber casing.

But at trial, both witnesses – Campbell and Hearns –testified they did not recall certain circumstances of the shooting. Campbell denied she had told police she saw the defendants with guns following the shooting. Hearns testified at trial that she "didn't see anything." The trial court deemed them as "hostile witnesses" and ruled that their recorded statements to police were admissible as "prior inconsistent statements." Following trial in October 2017, Jackson was convicted on all charges and sentenced to life plus 15 years in prison. He now appeals to the state Supreme Court.

ARGUMENTS: Jackson's attorney argues the evidence was insufficient to support the verdict "beyond a reasonable doubt." In his opening statement, the assistant district attorney alleged a motive for the shooting, referring to a prior drug-related robbery that involved the defendants and Ebony Washington and her boyfriend. Characterizing the scenario as "bad blood," the prosecutor asserted this was the reason behind Jackson and his co-defendant claiming they were going to shoot the vehicle the next time they saw it. "The State failed to produce evidence substantiating this main theme of its opening statement," the attorney argues in briefs.

"Without that evidence, which permeated the trial, the evidence was insufficient under the standard" in the U.S. Supreme Court's 1979 opinion in *Jackson v. Virginia*. The only evidence of Jackson even being involved in firing shots, according to one witness's interview, showed that whoever fired from the vehicle did so in self-defense. Among other errors, the trial court erred by admitting into evidence the recording of a witness stating that Jackson sold crack-cocaine, placing his character in evidence in violation of Georgia Code § 24-4-404. And the trial court erred, Jackson's attorney argues, in allowing the jury to hear "an unauthenticated recorded statement" of witnesses Deonshae Campbell and Dionysha Hearns "under the pretext of refreshing recollection, in violation of the procedure set forth in Georgia Code § 24-6-612." Finally, Jackson's trial attorney rendered "ineffective assistance of counsel" by failing to object to the video interviews shown to jurors of the pre-trial interviews of Campbell and Hearns.

The State, represented by the District Attorney's and Attorney General's offices, argues that "the evidence presented was more than sufficient" to support Jackson's conviction under the standard announced in *Jackson v. Virginia.* The trial court properly admitted the prior statements of Campbell and Hearns based on their testimony at trial. Jackson claims that this was error because their statements placed his character into evidence by stating that he sold crack, and also that the crime was the result of bad blood between himself, his co-defendant, and Ebony Washington. First, evidence is admissible even if it incidentally places a defendant's character into evidence, the State argues in briefs. Furthermore, evidence of Jackson's bad character was already an issue; the jury knew he had a prior felony conviction based on one of the charges against him, possession of a firearm by a convicted felon. Finally, Jackson's trial attorney was not ineffective, the State contends.

Attorney for Appellant (Jackson): David Lock

Attorneys for Appellee (State): Meg Heap, District Attorney, Greg McConnell, Chief Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.

JACOBS V. THE STATE (S19A0723)

A woman convicted in **Ware County** of murdering her husband of 43 years is appealing her conviction and life prison sentence.

FACTS: Betty Jacobs, now in her late seventies, and Davis Jacobs were married and had three children before they divorced for the second time in 2007, after which they still lived in the same house. He was an eye doctor and she worked with him at the medical office. Their long and tumultuous marriage was marked by decades of acrimony, allegations of infidelity, and violence. According to witnesses, they often argued and fought at their place of business, usually in a private office in the back. The two argued about money and accusations by Betty that Davis was a philanderer. On Aug. 21, 2007, Betty found old photographs of Davis with a woman Betty believed was a former mistress, causing a fight. According to state prosecutors, she threatened to shoot him and struck him in the back as he left the house. He spent that night in the office and the following night at a hotel. Two days later, Betty called one of her husband's employees and told her not to go to work that day. The employee went to work anyway, and when she arrived, she found Betty telling another employee to stop working and go home for the day. After eventually leaving the office, Betty called later asking how busy they were and whether they would be leaving early. The next morning, she drove to her husband's doctor's office and asked

one of the employees to have Davis meet her in the back office so he could sign payroll checks. Davis went to the back office, and employees later reported they expected to hear the two arguing but heard nothing. A short time later, however, gunshots rang out. Davis stumbled out of the office and fell to the floor, dead. Someone called 911, and when officers arrived, they found Betty sitting calmly in an office chair. She pointed to the body, which was lying face down in the hallway with a hammer nearby. Betty told officers Davis was trying to attack her with the hammer when she shot him in self-defense. She later said the same at trial, testifying she was unarmed at the time. Witnesses, however, testified that Betty typically carried in her purse a revolver her husband had given her for Christmas.

In November 2007, a Ware County grand indicted Betty for malice murder and other crimes in connection with the shooting death of Davis. At trial, in addition to her own testimony, Betty's attorney presented 17 other witnesses in support of the defense's theory that she suffered from "battered woman syndrome." Betty testified that Davis had physically abused her throughout their marriage and had routinely prescribed her addictive prescription drugs. A Ware County police officer testified she had been to the Jacobs's home the previous December in response to a domestic violence call and had arrested Davis Jacobs after he admitted slapping his wife. There was also evidence that Betty twice had been admitted to a psychiatric and substance abuse hospital for drug addiction. While there, she told hospital staff she had a history of being abused by her husband, who had overprescribed her medication. However, this defense theory was contradicted by evidence and testimony from a number of other witnesses at trial, including the couple's sons. Witnesses reported hearing Betty verbally abuse Davis throughout their marriage, including making numerous threats to kill and "gut" Davis, then dump his body on his parents' front porch. Witnesses also observed her use guns to intimidate Davis, one time firing a bullet at Davis in his office that hit the wall above his shoulder. Neither of the couple's sons reported seeing their father physically abuse their mother, and both testified that he was "always the peacemaker." They also testified that they were concerned for their father's safety and had encouraged him to remove all guns from the home.

Following the May 2009 trial, Betty Jacobs was found guilty of malice murder and possession of a firearm during the commission of a crime. She was sentenced to life plus five years in prison. The trial court denied her motion for a new trial, and she now appeals to the Georgia Supreme Court.

ARGUMENTS: Betty Jacobs's attorney argues that her trial attorney was incompetent and rendered "ineffective assistance of counsel" in violation of her constitutional rights. For one thing, the attorney failed to convey to Jacobs a potential plea offer for her consideration. According to the former district attorney of Ware County, who testified at the hearing on her motion for new trial, he had spoken with her lead attorney about the possibility of resolving the case if she pleaded guilty to the reduced crime of voluntary manslaughter, which carried a maximum 20-year prison sentence. But Betty's lawyer "unilaterally and unlawfully" rejected the potential plea negotiation and she was never informed of the possibility, her appellate attorney contends. The trial attorney also was incompetent for failing to object to inadmissible hearsay testimony, and the attorney failed to present competent expert testimony and failed to request that jurors be instructed about the defense of "involuntary intoxication."

The State, represented by the District Attorney's and Attorney General's offices, argues the trial court properly found that Jacobs failed to establish that her trial attorneys were

ineffective for not telling her about an informal plea discussion "because she would not have accepted any plea offer." "First, there was no formal plea offer extended" to Jacobs by the State, the State's attorneys argue. "More importantly, Appellant [i.e. Jacobs] would not have accepted a plea offer with a 20-year prison sentence, especially in light of the fact she was 68 years old at the time of trial, and she would receive substantially less money from a wrongful death civil settlement if she entered a plea of guilty versus obtaining an acquittal," the State argues. The trial court also properly found that Jacobs failed to establish her trial attorneys were ineffective for not objecting to hearsay statements attributed to her husband. And the trial court correctly found her attorneys were not ineffective for not presenting an "involuntary intoxication" defense or for failing to request a jury instruction on involuntary intoxication. "There was no evidence to support a defense of involuntary intoxication," the State argues, as Jacobs admitted to voluntarily consuming the medications in question.

Attorney for Appellant (Jacobs): Brian Steel

Attorneys for Appellee (State): Michelle McIntire, Assistant District Attorney, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew O'Brien, Asst. A.G.