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

**Summaries of Facts and Issues**

**Please note:** *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

## Tuesday, October 22, 2019

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

**<u>REED V. THE STATE</u> (S19A1342)**

A man is appealing the conviction and life prison sentence he received for his role in the shooting death and attempted robbery of Nigel James.

**FACTS:** On the night of Sept. 1, 2015, **Newton County** Sheriff's deputies responded to several 911 calls regarding multiple shots fired at the Ellingtons subdivision. When they arrived, they found James lying in the grass between two houses shouting for help. They found his car in the middle of the street, still running, with a shattered driver's side window, and blood on the driver's seat and door. Two law enforcement officers asked James who had shot him. James did not say, but instead asked for help, referred to the location where he was shot, and pointed to his cell phone, which was still in his car. A deputy asked James whether he would be able to show him who had shot him if he had his cell phone, to which James nodded yes. However, James died shortly after. Police found $1,370.69 on his body.

According to the State's case, earlier that day, James had purchased two stolen television sets from Curtis McCammon, who was accompanied by his friend, Areon Clemons. After James left, McCammon and Clemons drove around before meeting up with David Green, a drug dealer known as "Dizzy," from whom they bought some marijuana. Meanwhile, James had arrived back home and discovered that one of the televisions he had purchased was smaller

than promised. He called McCammon and asked for a refund or exchange. After the call, McCammon brought up with Clemons the idea of robbing and killing James. McCammon said he had seen James pull out a lot of cash when he paid for the televisions earlier that day. The two then went to the home of **Hentrez Reed** with the purpose of buying a gun. When they arrived, Reed was snorting a line of cocaine. The group discussed the plan and Reed provided the weapon. Clemons drove them back to the Ellingtons subdivision, where McCammon had agreed to meet James near the pool house. After arriving, all three went to the pool house to wait for James. Reed showed McCammon how to use the gun and gave it to him. When James pulled up, McCammon and Reed went to the parking lot to meet him, while Clemons returned to get the car. While on his way, Clemons heard multiple gun shots. When McCammon and Reed jumped into the car where Clemons was waiting, Clemons asked what had happened. McCammon said, "He asked for change for a hundred and [I] went to shooting."

When they failed to get any cash from James, Reed and McCammon discussed robbing Dizzy, from whom they had bought marijuana earlier. But Clemons refused to participate and dropped off Reed and McCammon at Reed's house.

After being shot, James was able to drive down the street, get out of his car, and bang on doors begging for help, which prompted the 911 calls. An autopsy later showed James died of multiple gunshot wounds to the left side of his torso.

Eight days later, McCammon and Clemons were arrested for burglary in a nearby neighborhood. Following the arrest, law enforcement interviewed Clemons about the murder. Clemons initially told police he had stayed in the car the entire time, but eventually confessed to his involvement and implicated both McCammon and Reed.

Following a joint trial with McCammon in March 2017, the jury found Reed guilty of malice murder, felony murder, criminal attempt to commit armed robbery, aggravated assault, possession of cocaine with intent to distribute, theft by receiving stolen property, and possession of a firearm during the commission of a felony. Reed was sentenced to life in prison plus 40 years. He now appeals to the state Supreme Court. (McCammon also was convicted on all counts and sentenced to life; Clemmons was convicted of lesser charges and sentenced to 10 years in prison.)

**ARGUMENTS:** Reed's attorney argues that he received "ineffective assistance of counsel" from his trial attorney in violation of his constitutional rights. Among his arguments, the attorney contends that trial counsel failed to file a motion to suppress Reed's "extremely inculpatory statements" made to law enforcement while he was in custody "as said prejudicial statements were induced by the investigators who provided Appellant [i.e. Reed] a hope of benefit in violation of Georgia Code § 24-8-824." The statute says: "To make a confession admissible, it shall have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury." During interrogation, Reed said the murder weapon had been stolen from him by one of his co-defendants and that after the killing, he had gotten the gun back and hidden it in his brother's home. "Before Appellant admitted to his knowledge and constructive possession of the murder weapon, law enforcement officers repeatedly led Appellant to believe that if he told the police the location of this killing weapon, only the co-defendants, not Appellant, would be charged with the offense of murder," which is in violation of the statute, the attorney argues. The attorney also was ineffective for failing to file a motion to exclude cite location evidence obtained from Reed's cell phone because

prosecutors obtained it using only a subpoena rather than obtaining a search warrant. "This cell site location evidence prejudiced Appellant because it defeated his alibi presented in his in-custody interrogation and declared Appellant wholly untruthful," his attorney argues in briefs. "Further, this evidence placed Appellant near the vicinity of the killing at the time of the killing." Finally, Reed's attorney for his appeal argues his trial attorney was ineffective for failing to object to inadmissible hearsay statements which prejudiced the outcome of the case.

The State, represented by the District Attorney's and Attorney General's offices, argues that Reed's trial attorney was not ineffective for not filing "what would have been a futile and frivolous motion to suppress the firearm used to murder Nigel James because no hope of benefit, as contemplated by § 24-8-824, was promised to Reed in exchange for disclosing the location of the firearm." "Law enforcement officers urging a defendant to be truthful, to help himself so that judges or district attorneys look favorably on cooperative defendants, do not implicate a hope of benefit," the State argues. Reed's trial attorney also was not ineffective for not objecting to the admission of phone records that at the time were obtained by law enforcement in a manner that was legally acceptable. Finally, the trial attorney was not ineffective for failing to object to Clemons's testimony regarding an affidavit Reed had written and had McCammon deliver to Clemons while the three were in jail. Reed wanted Clemons to sign the affidavit, which was a false statement, in an attempt to exonerate Reed.
**Attorney for Appellant (Reed):** Brian Steel
**Attorneys for Appellee (State):** Layla Zon, District Attorney, Amber Bennett, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Katherine Emerson, Asst. A.G.

**WILLIAMS V. DEKALB COUNTY ET AL. (S19A1163)**

A man who sued the **DeKalb County** Board of Commissioners for raising members' salaries by 60 percent is appealing a judge's ruling dismissing the case.

**FACTS: Edward E. Williams**, a DeKalb County taxpayer and citizen, alleges that on Jan. 18, 2018, the DeKalb Board of Commissioners sent a notice to the county's "legal organ" and other newspapers that it would hold a "special call" legislative retreat workshop at 9 a.m. the next day. Although a proposed pay increase did not appear on the meeting agenda, the board discussed it at the meeting. The board later placed an ad in the legal organ notifying the public of the board's intent to consider the salary increase at the Feb. 27, 2018 board meeting. The ad ran for three consecutive weeks on Feb. 8, 15, and 22. However, the pay increase did not appear on the board's pre-published agenda for the Feb. 27 meeting. At the meeting, Williams and several other citizens publicly expressed concerns about the pay change before the board voted 7-to-0 to add the salary increase to the agenda as a "walk-on" item. The board then voted 6-to-1 to pass the increase, raising commissioners' salaries from $40,530.55 to $65,000.

Williams asked the Georgia Attorney General and the DeKalb County Solicitor General to investigate and bring civil and criminal enforcement actions against DeKalb County, the Board of Commissioners, and the Chief Executive Officer. (The trial court later dismissed the case against the CEO, and Williams did not argue on appeal against the dismissal. The CEO did not participate in the salary decision or receive a 60 percent pay hike.) Both the Attorney General and the Solicitor General expressed concern about the board's actions but declined to pursue punitive action against the county. In a letter, the Solicitor General wrote that "not having the

item on the actual agenda prior to the meeting did give the appearance of impropriety on behalf of the Board of Commissioners. While not criminal, this action is unsettling…we strongly encourage the Board of Commissioners to reconsider their salary increase and to obtain additional training as it relates to the Open Meetings Act."

In August 2018, Williams sued the county and the others, claiming the board violated the Open Meetings Act by not giving proper notice of their intent to pass the pay increase, thus invalidating the increase and subjecting the board members to civil and criminal penalties. He also claimed that although the General Assembly had given county governing authorities the power to increase their pay through Georgia Code § 36-5-24, the Georgia Constitution and the DeKalb County Organizational Act prohibited them from having that power. Williams's complaint asked for mandamus, declaratory, and injunctive relief, as well as civil and criminal penalties under the Open Meetings Act, and attorney fees and litigation costs. In response, the county filed a motion to dismiss the case, asserting that Williams's claims were barred by sovereign, legislative, and official immunity; that he lacked standing; and that his complaint failed to state a claim upon which relief could be granted. Following a January 2019 hearing, where Williams offered no witnesses or documents as evidence, the trial court ruled in favor of the county. The judge dismissed Williams's writ of mandamus, finding Williams had failed to produce any evidence and had failed to state a claim for mandamus relief. The judge ruled he could not adjudicate Williams's claims without a certified copy of the salary ordinance in the record, and dismissed the remainder of the complaint based on sovereign, legislative, and official immunity, lack of standing, and failure to state a claim upon which relief may be granted. Williams now appeals to the state Supreme Court.

**ARGUMENTS:** Attorneys for Williams argue that the Georgia Constitution prohibits county governing authorities from having the power to increase their own pay, and Williams has standing to sue the board members and the Chief Executive Officer in their individual capacities for prospective injunctive relief and declaratory relief. Even if the General Assembly delegated this power to governing authorities by statute, the local salary ordinance still is invalid because the board members did not follow the guidelines and because the guidelines were insufficient to prevent conflicts of interest, the attorneys contend. Finally, the board members violated the Open Meetings Act in several ways before passing the salary ordinance, making them individually liable for civil penalties under the Act. "The Georgia Constitution says that county governing authorities cannot set their own pay," the attorneys argue. "Yet the General Assembly delegated that power to them by statute in 2001. Dr. Williams claims that the General Assembly cannot do that, and that even if it can, the DeKalb County Board of Commissioners improperly exercised that power when increasing its members' pay in February 2018."

"Because Appellant Williams's claims are supported only by his strongly-held opinions and not by applicable law, the trial court's dismissal of his lawsuit should be affirmed," the county's attorneys argue in briefs. County governing authorities have the authority to increase their own compensation under Georgia Code § 36-5-24, and Williams has failed to establish a case of actual controversy as required to pursue a declaratory judgment. Furthermore, the salary ordinance was advertised in compliance with the requirements of the statute, and Williams's challenge to the salary ordinance is not viable without a certified copy of the ordinance in the record. Finally, Williams lacks standing to pursue civil penalties for alleged violations of the Open Meetings Act, and his claims are barred by official immunity, the attorneys argue.

**Attorneys for Appellant (Williams):** Thomas Burch, John Kenerly, Student Counsel, UGA School of Law, Addison Smith, Student Counsel
**Attorneys for Appellees (County):** Laura Johnson, Deputy County Attorney, Bennett Bryan, Sr. Asst. Co. Attorney, Shaheem Williams, Sr. Asst. Co. Attorney, Ken Jarrard

**GEORGIA DEPARTMENT OF PUBLIC SAFETY V. RAGSDALE (S19G0422)**

The State is appealing a ruling by the Georgia Court of Appeals that allows a lawsuit against the **Georgia Department of Public Safety** to go forward.

**FACTS:** On Oct. 30, 2014, **Matthew Ragsdale** was injured in a car crash with a suspect who was fleeing from law enforcement. Ragsdale subsequently sued the Department of Public Safety in **Fulton County** State Court. Before a person may sue the State, he must first give notice of his intention to sue, which is called an "ante litem notice." Under Georgia Code § 50-21-26 (a) (1), that notice "shall be given in writing within 12 months of the date the loss was discovered or should have been discovered." Ragsdale sent an ante litem notice to the Department of Administrative Services on Dec. 3, 2014, well within the time limit, prior to filing his lawsuit. However, after learning that he had failed to include in his ante litem notice all the information required under the statute, he dismissed his initial filing. In March 2017, more than two years after the car wreck, Ragsdale sent a second ante litem notice to the Department of Administrative Services and filed a renewed lawsuit three months later. In response, the State filed a motion to dismiss the complaint on the ground that the ante litem notice was untimely under § 50-21-26 as the law required that the notice be filed by Oct. 30, 2015 – or within 12 months of the wreck. Ragsdale responded that his notice was filed in time under Georgia Code § 9-3-99, which "tolls" – or pauses – the running of the "period of limitations" involving the victim of an alleged crime "from the date of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated." Ragsdale argued he was the victim of Singleton's crime and therefore § 9-3-99 applied to him and his notice was therefore timely. The trial court agreed and denied the State's motion to dismiss. The State then appealed to the Court of Appeals, Georgia's intermediate appellate court. The State argued that § 9-3-99 did not apply because the ante litem notice is not a statute of limitations. The Court of Appeals disagreed and affirmed the denial of the State's motion to dismiss, noting that a number of its prior decisions had "determined that limitation-period-tolling statutes apply to the period for filing ante litem notice." The State now appeals to the Georgia Supreme Court, which agreed to review the case to determine whether the filing of an ante litem notice under § 50-21-26 (a) (1) is subject to tolling as laid out in § 9-3-99.

**ARGUMENTS:** The State, represented by the Solicitor General's and Attorney General's offices, argues that § 9-3-99 "does not toll the time for providing an ante litem notice" under § 50-21-26." "Notice-of-claim requirements like § 50-21-26 are not statutes of limitations." Notice-of-claim requirements and statutes of limitations are "functionally and conceptually distinct." Statutes of limitations are procedural rules that limit the time a party has to bring an action "once a right has accrued," the State argues in briefs. By contrast, notice-of-claim provisions are requirements that must be met before a party may file suit. Georgia Code § 9-3-99 tolls or pauses the running of "the period of limitations" for "tort claims" (i.e. claims involving a civil wrong) that arise from circumstances related to alleged crimes until the prosecution of the crime is complete. Code § 50-21-26 "requires anyone with a tort claim against

the state to provide notice of the claim before filing suit and mandates, among other things, that such notices be given in writing within 12 months of the date the loss was discovered or should have been discovered," the State argues. "The question in this case is whether § 9-3-99 tolls the running of § 50-21-26's time for providing notice of a potential claim. It does not. For starters, a 'period of limitations' is the same thing as a 'statute of limitations.' In Georgia and elsewhere, the legislature and the courts use these terms interchangeably. So the question reduces to whether the ante-litem-notice requirement is a 'statute of limitations' to which § 9-3-99's text applies. It does not." The Supreme Court should reverse the Court of Appeals's decision, the State urges.

Attorneys for Ragsdale point out that in enacting § 9-3-99 in 2005, the Georgia General Assembly decided that crime victims deserved the same status in civil cases that protected minors, incompetent adults, and estates. The State's position in this case "undermines the protections that the General Assembly has prescribed for all of the classes of disadvantaged claimants, not just crime victims," the attorneys argue in briefs. Suit-filing periods of limitation and notice-giving periods of limitation are of course different, but they are both "periods of limitations." "Since suit-filing time limits and notice-giving time limits are both 'limitations,' both of which affect the validity of lawsuits; since the tolling statutes do not expressly exclude notice-giving time limits; and since the tolling statute was enacted in the context of 11 Georgia cases stating that tolling statutes apply to notice-giving time limits, § 9-3-99 should be construed to toll ante-litem-notice statutes," the attorneys argue. "Georgia courts have correctly treated ante litem notice provisions as 'statutes of limitations' for purposes of tolling statutes, and that interpretation is now controlling." Georgia Code § 50-21-26 is a "statute of limitations for purposes of applying tolling statutes." The Department of Public Safety's argument is "erroneous," the attorneys contend. "The fundamental mistake in the department's argument is its premise that, if suit-filing deadline statutes and notice-giving deadline statutes are different for *some* purposes, they are categorically different and mutually exclusive for *all* purposes. This is a false dilemma." The Supreme Court should uphold the Court of Appeals' decision, Ragsdale's attorneys argue.

**Attorneys for Appellant (State):** Christopher Carr, Attorney General, Kathleen Pacious, Dep. A.G., Loretta Pinkston-Pope, Sr. Asst. A.G., Robert Bunner, Sr. Asst. A.G., Andrew Pinson, Solicitor General, Ross Bergethon, Dep. Sol. Gen.

**Attorneys for Appellee (Ragsdale):** Edward Silverbach, Matthew Watson, Charles Cork, III

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

**<u>CALHOUN V. THE STATE</u> (S19A1411)**

A young man who was fleeing police when his car flipped over, killing his young female passenger, is appealing his felony murder conviction and life prison sentence, arguing that a Georgia State Patrol Officer's use of a special maneuver was the cause of the wreck and the woman's death.

**FACTS:** On May 14, 2013, **Thanquarius Rashawn Calhoun** was speeding in a Toyota Corolla on Interstate 85 in Banks County when he passed a Banks County Sheriff's Deputy while driving at more than 90 miles per hour in a 70-mph zone. The deputy, who was in an unmarked SUV, activated his blue lights and attempted to initiate a traffic stop. Inside

Calhoun's car was 19-year-old Marion Shore, whose mother owned the car, and Relpheal Morton, another passenger seated in the back. Calhoun ignored the deputy and kept going, crossing into **Franklin County**. The Banks County deputy contacted Franklin law enforcement who joined the pursuit along with officers from the Georgia State Patrol. All officers drove patrol cars with lights activated, wore uniforms, and displayed badges. As Calhoun increased his speed in excess of 100 miles per hour and weaved in and out of traffic, officers attempted several different methods of stopping the pursuit, including attempting to "box in" Calhoun and deploying spike strips to deflate his vehicle's tires. However, Calhoun eluded the officers and continued to drive erratically, weaving in-and-out of traffic, and at times accelerating to speeds greater than 110 miles per hour. In all, he would cover 21 miles before the chase would come to an end, at one point speeding through a construction zone.

Officers spoke with one another on car-to-car radio and decided they needed to stop Calhoun's car due to the danger to the public. Fourteen minutes after the pursuit began and after officers found a stretch of interstate in Franklin County with no traffic and clear areas around the road, Georgia State Patrol Trooper Donnie O'Neal Saddler performed a Precision Intercept Technique ("PIT") maneuver, which is "a pursuit tactic by which a pursuing car can force a fleeing car to abruptly turn sideways, causing the driver to lose control and stop." Ideally, the officer pulls alongside the fleeing vehicle so the officer's front bumper is just ahead of the other vehicle's back bumper. Matching the fleeing driver's speed, the officer then makes a quick quarter turn of the wheel toward the fleeing car, touching but not ramming it. The PIT maneuver is designed to cause the fleeing car to spin out and safely stop.

When Saddler performed the maneuver, the Corolla Calhoun was driving at about 111 miles per hour spun clockwise, careened off the side of the highway into an embankment, and rolled over several times before coming to a stop. Calhoun was ejected from the car but survived. Morton, the backseat passenger, also survived. But Shore, who was sitting in the front passenger seat and wearing her seatbelt, wound up hanging partially out the passenger window and was killed as the car rolled over her.

Following a March 2015 trial, the jury found Calhoun guilty of felony murder, vehicular homicide, felony fleeing or attempting to elude a police officer, and a number of misdemeanors, including reckless driving, speeding, and driving with a suspended license – all in connection with the death of Marion Shore. He was sentenced to life in prison. In April 2015, representing himself pro se, Calhoun filed a motion for new trial. After he was represented by an attorney, who filed a supplemental motion for new trial, the trial court held a hearing and denied the motion. Calhoun's attorney then appealed to the state Supreme Court, asking the high court to remand the case for further hearing so Calhoun could raise grounds of ineffective assistance of trial counsel as grounds for reversing his convictions. The Supreme Court granted Calhoun's motion and remanded the case to the trial court for consideration of the claims. In March 2017, Calhoun's attorney filed a subsequent motion for new trial adding the issue of ineffective assistance of counsel. The trial court held a hearing on the motion and denied it on April 1, 2019. Calhoun now appeals again to the state Supreme Court.

**ARGUMENTS:** Calhoun's attorneys for his appeal argue that the trial court erred by concluding that his trial attorney's performance was not deficient, and that Calhoun did not establish a reasonable probability that, but for the attorney's deficiencies, the outcome of his trial would have been different. The trial attorney for the then 21-year-old Calhoun "did next to

nothing to investigate, prepare, or present Calhoun's defense," the attorneys argue in briefs. "Calhoun was deprived of his constitutional right to effective assistance of counsel and is serving a life sentence as a result. Trial counsel put up no evidence in defense and prepared neither himself nor the jury to address the key factual issue in the case: whether it was unreasonable – and therefore an intervening cause – for the Georgia State Patrol to use deadly force on an innocent passenger in Calhoun's car by executing the Precision Immobilization Technique ("PIT") maneuver at 111 miles per hour to stop Calhoun, whose only underlying offense was speeding. He cross-examined fewer than half of the State's 13 witnesses. He did no research and asked for no expert assistance." "The evidence shows that Calhoun's counsel performed his duties at trial in an objectively unreasonable way. The independent and cumulative effect of trial counsel's errors, which fall well outside the broad range of reasonable professional conduct, severely prejudiced Calhoun, entitling him to a new trial," Calhoun's attorneys argue.

The State, represented by the District Attorney's and Attorney General's offices, argues that Calhoun received effective assistance of counsel from his trial attorney, and the Franklin County court's decision should be upheld. Calhoun's trial attorney, who had more than 20 years of experience in practicing law and had tried many criminal cases, was not ineffective for failing to investigate the use of the PIT maneuver, hire an expert to testify about the maneuver, or request jury instructions on proximate or intervening cause. All three alleged failures relate to Calhoun's allegation that his attorney failed to put forth a certain defense. But decisions "regarding which particular defense to raise are trial strategy within the discretion of trial counsel," the State argues in briefs. Furthermore, a trial attorney cannot be ineffective for failing to pursue a defense that is not authorized by the law. Under Georgia Code § 40-6-6 (d) (2), "when a law enforcement officer in a law enforcement vehicle is pursuing a fleeing suspect in another vehicle and the fleeing suspect…kills any person during the pursuit, the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the…death caused by the fleeing suspect unless the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit." Because Calhoun has not proven that Trooper Saddler acted with reckless disregard for proper law enforcement procedures, his actions cannot, by statute, be the proximate or contributing proximate cause for the death of Marion Shore, the State contends. "That cause, therefore, falls squarely onto the shoulders of Appellant Thanquarious Calhoun who created the dangerous situation which resulted in the death of Marion Shore." The State argues that none of Calhoun's other allegations of ineffective assistance of counsel has merit.

**Attorneys for Appellant (Calhoun):** Lucas Westby, Erika Birg, Brandon Moulard, Shaniqua Singleton, Elizabeth Falconer

**Attorneys for Appellee (State):** D. Parks White, District Attorney, Brian Atkinson, Chief Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

**MCELRATH V. THE STATE (S19A1361)**

A 19-year-old who was released from a state mental health facility in Atlanta a week before he stabbed his mother to death, is appealing his convictions in **Cobb County** for felony murder and aggravated assault, for which the jury found him "guilty but mentally ill" while returning a verdict of "*not* guilty by reason of insanity" for his conviction of malice murder.

**FACTS:** Diane McElrath adopted **Damian McElrath** in Ohio when he was 2 years old. A number of years later, she and her other son, Christopher Fort, moved to Georgia. Damian began having behavioral problems early in life. He was defiant and disobedient. He also had an extensive history of mental illness, which included diagnoses of schizophrenia and bipolar disorder as a teenager, for which his mother took him to receive psychiatric treatment. At times, he was hospitalized to receive inpatient treatment. Damian consistently claimed that he believed his mother was poisoning his food. In December 2011, an off-duty officer witnessed Damian shoplifting four iPads from a Target store. Damian resisted arrest and threatened to kill the officer. On March 22, 2012, Damian called 911 and claimed that his mother had sprinkled rat poison on his food. He later told responding emergency personnel that he had eaten oatmeal the day before that his mother had poisoned. Diane eventually kicked her son out of the house and rented him a studio hotel room at an Efficiency Lodge. She and Chris frequently visited Damian and took him food. He refused to eat it, however, telling Chris he believed she was poisoning him, despite Chris eating the food in front of his brother and telling him she was not. In June 2012, Damian was hospitalized at Peachford Hospital in metro Atlanta due largely to delusions he was having. While there, he told staff that he was a secret agent and hit man, made frequent trips to Russia where he had a gun, had hundreds of thousands of dollars, had killed several people, and was hearing voices. No more than two weeks later, Damian was discharged back home with a diagnosis of schizophrenia.

About a week after the discharge, on the morning of July 16, 2012, Damian asked Diane for some money to buy "spice," a synthetic marijuana, but she refused. Chris left the house at 11 a.m. When he returned several hours later, police were at the home and his mother was dead. According to prosecutors, Damian took a knife from the kitchen and began stabbing Diane when she was on the top floor of their split-level home. He continued stabbing her down the stairs, and as she lay by the front door. In all, he stabbed her more than 50 times, with 34 stab wounds to her face and neck. He then called 911, stating that he had killed his mom because she was poisoning him, and he asked the dispatcher if he was wrong to have done that. Cobb County police found Diane lying in a pool of blood by the front door. Before they arrived, Damian had placed a note he'd written on the table. Entitled, "my antisocial life," Damian wrote that he was not sorry for what he had done and that "she poisoned me so I killed her. I think I am right for doing it."

In October 2012, Damian McElrath was indicted for malice murder, felony murder and aggravated assault for the stabbing death of Diane McElrath. Following a December 2017 trial, the jury found him not guilty by reason of insanity for malice murder, and guilty but mentally ill for felony murder and aggravated assault. The trial court entered a civil commitment order on the malice murder count and sentenced McElrath to life in prison on the felony murder count. As a result of the verdict of "not guilty by reason of insanity," McElrath was initially detained in a state mental health facility for 30 days for an evaluation of his current mental condition. At a February 2019 hearing, the trial court issued an order discharging McElrath from civil commitment and remanding him to the custody of the Department of Corrections and a state prison facility, where he remains. His attorneys now appeal to the state Supreme Court.

**ARGUMENTS:** "The evidence of insanity was so overwhelming that a rational trier of fact could not find that Appellant [i.e. Damian McElrath] had failed to prove by a preponderance of evidence that he was insane under Georgia Code § 16-3-3," his attorneys argue in briefs. That statute says: "A person shall not be found guilty of a crime when, at the time of the act, omission,

or negligence constituting the crime, the person, because of mental disease, injury, or congenital deficiency, acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime." Under the Georgia Supreme Court's 2002 decision in *Boswell v. State,* "When a delusional compulsion is the basis of an insanity defense, the delusion must be one that, if it had been true, would have justified the defendant's actions." The evidence showed that Damian suffered from a severe mental disease and was delusional at the time of the killing. Interviewed immediately after the murder, he told detectives his mother was trying to kill him by poisoning his Kool-Aid and spraying pesticide on his ice chips. He told police he had killed her because he wanted to live and that he believed he was in a "life or death" situation. According to testimony at trial, he had said he knew he could be sentenced to life in prison, "but I get to live, though, that's the best part." Damian was forensically evaluated by two court-appointed mental health experts and a psychiatrist retained by the Cobb County District Attorney's office. "The expert testimony established, without contradiction, that at the time of the killing Appellant was suffering from a delusion that his life was in imminent peril because his mother was trying to poison him," the attorneys argue. "The experts rejected any suggestion that Appellant was motivated by revenge, or acted for any reason other than his paranoid delusion that his life was in imminent danger." Among other arguments, the attorneys contend that the trial court erred "by failing to vacate repugnant verdicts." The jury returned a verdict of <u>not guilty</u> but mentally ill for the count of malice murder, but it found Damian <u>guilty</u> but mentally ill for the remaining counts, and yet they were "based on the same conduct," rendering the verdicts "repugnant." The trial court also erred by discharging Damian from a state mental health facility "where the evidence is overwhelming that Appellant meets the criteria for inpatient commitment," the attorneys argue.

The State, represented by the District Attorney's and Attorney General's offices, argues the evidence was sufficient to support the jury's verdict of guilty but mentally ill. "When the basis of an insanity defense is the defendant's delusional compulsion, 'the delusion must be one that, if it had been true, would have justified the defendant's actions,'" the State argues, quoting the 2002 *Boswell* decision. In the same decision, the high court ruled that, "A defendant who is not insane may nonetheless be found guilty but mentally ill if, at the time of the crime, the jury finds beyond a reasonable doubt that [he] committed the crime and had a 'disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with ordinary demands of life.'" The decision also said: "Unless the evidence of insanity is overwhelming, the jury's determination that the defendant was sane should be upheld." Here, Damian failed to prove that his delusion that his mother was poisoning him compelled him "to act in a manner that would have been *lawful and right* if the facts had been as the defendant imagined them to be," the State argues. "First, assuming the delusion that his mother was poisoning him was true, the jury had to find that Appellant acted in self-defense on the day of the stabbing rather than acting in revenge for the prior poisoning. The evidence on this point was conflicting at trial," the State contends, adding there was evidence that indicated Damian killed his mother because he was angry she was poisoning him. The trial court also properly declined to vacate the verdicts, "as there is no mutually exclusive verdict rule and the verdicts were not 'repugnant,'" the State argues. Finally, the trial court properly found that Damian did not meet the criteria for inpatient commitment and properly discharged him.

**Attorneys for Appellant (McElrath):** H. Maddox Kilgore, Carlos Rodriguez

**Attorneys for Appellee (State):** Joyette Holmes, District Attorney, Amelia Pray, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

**THE STATE V. HAMILTON (S19A1363)**

The State is appealing a **Dougherty County** judge's ruling that a woman who was previously convicted of murdering her ex-husband, then granted a new trial, is now immune from prosecution. This is the second time this case has come before the state Supreme Court.

**FACTS:** For years, **Marlina Hamilton** allegedly suffered abuse at the hands of her husband, Christopher Donaldson, before she shot and killed him. According to the facts of the case, Hamilton and Donaldson began dating in 2000, moved in together in 2001, and had a son. Hamilton had a second son, D'Angelo, from a previous relationship. At trial, several witnesses testified that over the years, Donaldson physically abused Hamilton on multiple occasions. Beginning in 2001, he beat her after accusing her of cheating on him. He beat her after blaming her for a burglary of their home. And he beat her and hit her in the stomach with a broom after an argument. Hamilton's friend, Angela Whitaker, testified that she saw bruises on Hamilton's arms and legs, and Hamilton told her they were from fights with Donaldson. Following one of those fights, Whitaker had to remove a piece of glass from Hamilton's back. When Hamilton became pregnant with twins in 2004, Donaldson punched her in the mouth and said he did not want the babies. She subsequently had an abortion and moved in with her mother, but the couple reunited in 2005. That same year, Donaldson was arrested for drug crimes. After his attorney suggested he would receive a lighter sentence if the couple wed, the two got married in 2006. Hamilton eventually found out he was cheating on her and filed for divorce, which became final in 2008.

Donaldson was released from prison in March 2010, and three months later asked Hamilton to move back in with him. When she refused, he punched her several times and raped her in her home. As a result, Hamilton again became pregnant and again had an abortion. In August of that year, Donaldson became angry about Hamilton's relationship with another man, and he hit her in the face and punched her in the side in front of her children. In October, she agreed to let him move into her home in Albany, "if you will just stop this."

According to her testimony at her murder trial, the evening of Oct. 11, 2010, Donaldson became angry at her and started punching his fists and threatening Hamilton. She went to the bathroom and sent a text message to her friend, asking her to call police. Officers responded about 11 p.m., ordered Donaldson to leave, and gave Hamilton information on how to get assistance for domestic violence. After police left, Donaldson returned to the home, let himself in, and when she asked him to leave, began pacing back and forth. Donaldson then hit Hamilton in the back of her head. When he swung at her again, Hamilton grabbed a gun that she had under the sofa and shot him twice in the lower body. He then began beating and choking her as they wrestled for the gun. He pointed the gun at her, but she was able to remove the magazine. He then hit her in the head with the gun and punched her. Meanwhile, her son, D'Angelo, called police and pulled Donaldson off his mother. When police arrived, Hamilton told them she "felt like he was going to kill [her] that night." Donaldson died from the gunshot wounds.

In February 2011, a grand jury indicted Hamilton for malice murder, felony murder based on aggravated assault with a deadly weapon, aggravated assault-family violence, aggravated assault with a deadly weapon, and possession of a firearm during the commission of a felony. At

her March 2011 trial, the defense attorney argued that Hamilton had shot Donaldson in self-defense due to battered person syndrome. The defense presented an expert witness who testified on the syndrome; the State did not present any contrary expert testimony. The jury acquitted Hamilton of malice murder but found her guilty of the other charges. The judge then sentenced her to life plus five years in prison. In April 2011, Hamilton's attorney filed a motion requesting a new trial. In September 2015, the trial judge – using his discretion to sit as a "thirteenth juror" – granted Hamilton's motion for a new trial, concluding that the jury's guilty verdicts were "decidedly and strongly against the weight of the evidence" and "contrary to the principles of justice and equity." The trial court also concluded that Hamilton's trial attorney "was ineffective for failing to move for pre-trial immunity under Georgia Code § 16-3-24.2." State prosecutors appealed to the Georgia Supreme Court, but the high court unanimously upheld the ruling. On Feb. 26, 2018, Hamilton's succeeding attorney filed a Motion for Immunity from Prosecution. Following a hearing, on April 26, 2019, the trial court granted the motion. The State now appeals again to the state Supreme Court.

**ARGUMENTS:** Represented by the District Attorney's office, the State argues that the trial court erred in granting immunity to Hamilton post-trial and post-sentence and that the decision violates the intent behind the state's immunity statute, Georgia Code § 16-3-24.2, which says: "A person who uses threats or force in accordance with Code Section 16-3-21… shall be immune from criminal prosecution." Code Section 16-3-21 states that, "A person is justified in threatening or using force against another when…she reasonably believes that such threat or force is necessary to defend…herself…against such other's imminent use of unlawful force." In its 2008 decision in *Fair v. State,* the Georgia Supreme Court stated that, "This Court determined that the plain language construction of § 16-3-24.2 required that the determination of whether the defendants in that case were immune from prosecution must be made prior to any trial on those facts," the State argues. "The issue of immunity is a question for the trial court *prior* to trial, with the defendant bearing the burden of showing by a preponderance of the evidence that he is entitled to immunity." Among other errors, the State contends that the trial court's granting of immunity "under the guise of" the state Supreme Court's 2013 decision in *Hipp v. State* violates the U.S. and Georgia constitutions. "Post-trial immunity consideration is an affront to the legislative intent of the statute in question, § 16-3-24.2, and a violation of the United States Constitution," the State argues in briefs. "The finding of a jury should not be disturbed by a trial court after the fact, unless the verdict is directly contrary to the evidence." Furthermore, there was insufficient evidence to support the trial court's granting of immunity, and the trial court used an incorrect standard of review, the State contends. And the State "respectfully argues" that the trial judge's "impartiality *might reasonably be questioned,*" and the judge should have recused himself when the case was remanded to his court for a new trial. Finally, the "trial court erred by adopting, over objection and without sufficient legal basis, the transcripts from proceedings of a prior jury trial to adjudicate and grant a pre-trial immunity motion," the State argues. It asks the state Supreme Court for "reversal of the order granting immunity and remand of this case, recusal of the current trial judge, and further direction about how the issue of pre-trial immunity should be resolved in relation to Georgia legal procedure."

Hamilton's attorney argues the trial court did not err in granting her motion for immunity. The State argued that the trial court's grant of immunity was in error because it was granted "post-trial," but "the appeal before this court is a new case because a new trial was granted," the

attorney argues in briefs. The trial court did not violate the U.S. or state constitutions in holding Hamilton immune from prosecution under § 16-3-24.2, and it used the correct standard of review in determining that the evidence supported Hamilton being granted immunity. The trial court also did not err in holding that transcripts from the proceedings of a prior jury trial and motion for new trial could be used to consider a grant of pretrial immunity to Hamilton. And the judge did not err in refusing to recuse himself from the case, her attorney contends.
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