Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, January 14, 2020

10:00 A.M. Session

ALBERT DEBELBOT V. THE STATE (S19A1474)
ASHLEY DEBELBOT V. THE STATE (S19A1475)

A military couple is appealing their convictions and life prison sentences for the murder of their newborn daughter. This is the second time this case has been before the Georgia Supreme Court.

FACTS: Albert and Ashley Debelbot met while serving in the Army overseas and married in November 2007. Albert received orders transferring him to the Fourth Ranger Battalion School at Fort Benning in Columbus, GA, and not long after, Ashley became pregnant with their first child. On May 29, 2008, she gave birth at Martin Army Community Hospital in Columbus to a daughter they named McKenzy. The birth took place without incident, and on May 31, at around 12:30 p.m., the couple took their new healthy infant home in **Muscogee County**. They were the only caretakers of McKenzy and later said she did fine all day. After going to bed, however, they awoke after midnight and discovered a lump on the baby's forehead. Ashley called the hospital, and medical staff directed her to bring the baby back to the hospital. At about 1:30 a.m., the couple returned to the hospital where medical staff examined the baby and took x-rays and CT scans. A little more than two hours later, McKenzy was pronounced dead on June 1, 2008.

A medical examiner for the Georgia Bureau of Investigation (GBI) conducted an autopsy on June 2. She found extensive fractures on the right side of the baby's head and bleeding in the brain. The medical examiner would later testify that "the autopsy disclosed very severe head trauma." She concluded that McKenzy had died from "blunt force head trauma," either by a series of blows to the head or by "a crushing type of injury" that had occurred within hours of her death. She assigned the manner of death as a homicide, calling it "an intentional act." After the medical examiner reported her findings to the Columbus police, Ashley and Albert Debelbot were arrested.

In June 2009, a grand jury indicted both parents for malice murder, felony murder, and cruelty to children in the first degree in connection with the death of McKenzy Debelbot. At trial, Albert and Ashley denied any knowledge of how the baby's skull was fractured. But the State presented testimony from a man who had shared a holding cell with Albert and said Albert had told him that the night the baby came home, he had gone out to buy drugs and returned to find the baby not moving. Albert told the man that when he asked Ashley what had happened, she told him she had "spanked" the baby. During the proceedings, neither Albert nor Ashley presented any medical experts to rebut the expert medical testimony of the GBI medical examiner.

Following a joint trial, Albert and Ashley were found guilty of all charges and sentenced to life in prison. Subsequently, both filed motions requesting a new trial. At hearings on the motions, the Debelbots presented four expert witnesses who testified that they believed the baby's injuries were caused by a defect that occurred prior to her birth and was potentially exacerbated during her birth. State prosecutors also presented two medical experts who testified in support of the medical examiner's opinion that the injuries to the couple's baby were non-accidental and a homicide. Although the motion-for-new-trial court had qualified all four of the Debelbots' expert witnesses as experts, the trial judge determined that the Debelbots' witnesses, all doctors, were not credible, and the judge denied the motion for a new trial. The Debelbots then appealed to the Georgia Supreme Court, arguing in part that the evidence was insufficient to sustain their convictions because the State failed to present direct evidence that either of them inflicted, or helped the other inflict, the alleged injuries to the baby.

In an opinion March 3, 2019, the high court concluded that "the evidence was sufficient to support the convictions of both Albert and Ashley." Under the law, even if a person is not directly responsible for the crime, he or she may be convicted as a party to the crime.

The Debelbots also argued on appeal that their respective trial attorneys had rendered "ineffective assistance of counsel" in violation of their constitutional rights, and that their convictions could not stand for other reasons.

"While we are deeply troubled by at least two of the claims of ineffective assistance of counsel, we conclude that the nature of the order below prevents us from reviewing meaningfully the most significant alleged deficiency by trial counsel for both Ashley and Albert – their failure to offer an alternative explanation for McKenzy's injury," Justice Nels S.D. Peterson wrote for a unanimous court. In a single sentence, the trial court had concluded in its order that none of the Debelbots' witnesses was credible, despite having qualified them as expert witnesses. It had also concluded that all of the Debelbots' medical evidence was inadmissible under the Georgia Supreme Court's 1982 decision in *Harper v. State*. Under *Harper*, the test for determining the

admissibility of a scientific procedure is whether the procedure has reached a scientific stage of "verifiable certainty."

Finding that "the sweeping nature" of the trial court's "broad conclusions precludes our meaningful review at this time," the high court vacated the trial court's order denying the Debelbots' motion for new trial and sent it back to the trial court for further proceedings. Justice Charles J. Bethel wrote in the March 2019 opinion a concurrence to emphasize the "erroneous nature" of the state prosecutor's closing argument at trial. The prosecutor told jurors that beyond "reasonable doubt does not mean beyond all doubt. It does not mean to a mathematical certainty….You don't have to be 90 percent sure. You don't have to be 80 percent sure. ***You don't have to be 51 percent sure***." Here, the State suggested to the jury "that reasonable doubt is less than 51 percent – functionally less than a preponderance of the evidence," Bethel wrote. "Proof beyond a reasonable doubt is the highest standard of proof recognized in our system of jurisprudence…The State's closing argument invited the jury to apply a significantly lower standard, which is repugnant to our system of criminal justice and its requirement of proof beyond a reasonable doubt to support a conviction."

In May 2019, the Muscogee County Superior Court issued an order, again rejecting the Debelbots' motion for new trial. The couple again appeals to the Georgia Supreme Court.

ARGUMENTS (S19A1474 – Albert): Albert's attorneys argue that, "Albert's experts presented a medical explanation that his jury never heard. Applying their experience and training to mostly undisputed facts, these experts undermined the State's fragile case." Albert was denied his constitutional right to "effective assistance of counsel" when his trial attorney failed to object when the State's prosecutor improperly characterized the required standard of proof – "beyond a reasonable doubt" – as the less stringent standard of the "preponderance of the evidence," his attorneys argue. Albert was also denied effective assistance of counsel by his trial counsel's failure to investigate or present an alternative cause of death, leaving the state medical examiner's opinion as the only evidence that a crime had occurred. "Where the State's case rested entirely on the medical examiner and the jury was told to convict on less than a preponderance of the evidence, counsel's failure to investigate or present an alternative cause of death undermines confidence in the trial's outcome," Albert's attorneys argue.

ARGUMENTS (S19A1475 – Ashley): Ashley's attorneys argue that for the last decade, Ashley has been under conviction and sentence for the murder of her newborn daughter – "a murder that four expert medical doctors concluded *did not happen.*" "Although those doctors did not testify at Ashley's trial, they testified at her motion for a new trial that, to a medical certainty, McKenzy was not born a normal, healthy baby and did not die from the infliction of intentional blunt-force trauma while she was at home in the sole care of her parents, as the State had alleged. Rather, McKenzy, who was less than three days old and within hours of her release from the hospital when she died, suffered six profound abnormalities of her skull and brain," the attorneys argue. The lower court erred by wrongly applying legal standards to the medical evidence, they contend. As the state Supreme Court stated in its March 2019 opinion in the case, it seemed "plain" that *Harper* did "not apply to literally every word of medically related testimony from the Debelbots' experts," although it likely applied to some portions of the testimony. The "order on remand discloses no finding to which this Court would owe any deference," Ashley's attorneys argue in briefs. The State also unlawfully suppressed the bases for the medical testimony in violation of the U.S. Supreme Court's 1963 decision in *Brady v. Maryland* because

the State had both the CT scans of McKenzy's skull and brain but failed to disclose them in what would have been information favorable to the defendant. The attorneys also argue that Ashley was denied effective assistance of counsel for the same reasons that Albert was. Finally, the trial judge erred in instructing jurors on party liability but refused to instruct the jury on the principles of mere presence and association, the attorneys argue. "When a court opts to instruct on a theory of liability, it errs by not also instructing on the corresponding theory of acquittal if there is evidence to support it."

ARGUMENTS (The State): In response to both Albert's and Ashley's arguments, the State argues that, "Three-day old McKenzy Debelbot was murdered by her parents by fracturing her skull with intentional blunt force." The baby was born "healthy after a fairly easy, uncomplicated delivery." She was attended by multiple medical personnel during the two days she was at the hospital and at discharge. Her parents admitted she was doing very well all day the day they took her home. "At lengthy motion-for-new-trial hearings, the defendants presented medical witnesses who manipulated CT scan images to form opinions" that McKenzy was missing in utero three portions of her brain, had malformed in utero thin demineralized skull that was missing a piece of skull, and had skull fractures in utero. "However, the fact is that McKenzy did not have any missing brain portions, McKenzy's skull was not malformed nor missing a piece of skull, and the defense's medical witnesses based their opinions on manipulated CT images to claim otherwise, and the trial court as fact finder found," the State argues. "The trial court also found that the defendant's medical witnesses used inaccurate, manipulated Osirix images to form their conclusions and testimony." Furthermore, the State contends, "the defendants failed to prove the scientific reliability of their technique and theory for admissibility under *Harper* of their novel theory…." "Further review is not required," the State argues, and this Court should affirm the trial court and the Debelbots' convictions. The State addresses each of the couple's specific arguments in its briefs, arguing that both received effective assistance of counsel.

Attorneys for Appellant (Albert): Carrie Sperling, Thomas Flournoy III
Attorneys for Appellant (Ashley): Brandon Bullard, Jimmonique Rodgers, James Bonner, Jr., A. James Anderson, Anna Halsey
Attorneys for Appellee (State): Julia Slater, District Attorney, Sadhana Dailey, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Ashleigh Headrick, Asst. A.G.

<u>JACKSON ET AL. V. RAFFENSPERGER</u> (S20A0039)

A certified lactation counselor who helps new mothers with breastfeeding their infants is challenging a state law as unconstitutional, arguing it will put hundreds of lactation consultants out of work and "drastically reduce access to breastfeeding care and advice, particularly in rural Georgia."

FACTS: Mary Nicholson Jackson is a lactation consultant with decades of experience who works at Grady hospital in Atlanta. She helped found the non-profit, Reaching Our Sisters Everywhere (ROSE), to provide underserved communities with breastfeeding education, advocacy, and support. Breastfeeding is the preferred method of feeding infants in their first year due to the substantial health benefits. Although many women have no trouble breastfeeding their babies, many need help, and lactation consultants offer guidance and support. Certified lactation

counselors (CLCs), such as Jackson, must attend a 45-hour seminar on "breastfeeding counseling, assessment, and support skills," and pass an exam, but the CLC process does not include supervised clinical experience. In 2015, the Georgia General Assembly passed the Georgia Lactation Consultants Practice Act, requiring the licensure of those practicing lactation care so that they possess certification as "International Board Certified Lactation Consultants," who must take college courses, complete 300 hours of supervised clinical experience, and pass an exam.

In June 2018, Jackson and her organization, ROSE, sued the **Secretary of State, Brad Raffensperger**, in **Fulton County** Superior Court. They allege that the Act makes the education and training requirements too stringent and harms mothers and infants by reducing access to lactation care and services. Jackson and ROSE filed two legal claims: a due-process claim alleging that the Act denies lactation consultants the right to practice their chosen profession free from unreasonable interference, and an equal-protection claim alleging that the Act treats a small group of lactation consultants differently based on criteria unrelated to the Act's purposes. The Secretary of State filed a motion to dismiss the action against him in his official capacity based on sovereign immunity. He also filed a motion to dismiss for failure to state a claim upon which legal relief could be granted. The superior court granted both motions, finding that Jackson and ROSE had failed to state a substantive due-process claim or an equal-protection claim. Jackson and ROSE now appeal to the Georgia Supreme Court.

ARGUMENTS: Attorneys for Jackson and ROSE point out that lactation consultants provide support and guidance, not medical diagnoses or treatment. "They have done so safely in Georgia (and around the country) for decades." "Although their job involves some hands-on assistance, lactation consultants are not medical providers and cannot diagnose or treat medical conditions," the attorneys argue in briefs. "And all lactation consultants must refer 'high-risk' situations to doctors. The general population seeking lactation consultation does not fall into this 'high-risk' category." Certified lactation counselors (CLCs) and other non-international-board certified consultants, are "spread across the state and hence more available to minorities and rural Georgians. By comparison, many International Board Certified Lactation Consultants are also nurses or other health-care professionals with competing professional demands. They typically charge more and associate with hospitals or other institutions, which some mothers find intimidating." Currently, there are around 335 practicing international board certified consultants while there are "well over 800 active CLCs." Becoming an international board certified lactation consultant is impossible for many – "in effect, it requires stopping work and getting a college education," the attorneys argue. Yet, despite the difference in training requirements, the two kinds of practitioners "are equally qualified to provide lactation care and services." When the General Assembly was first considering a bill to license lactation consultants, the Georgia Occupational Regulation Review Council advised against it because it would harm the public, "but the Act passed anyway," the attorneys contend. The Fulton County Superior Court erred in dismissing Jackson's and ROSE's due-process claim, their attorneys argue. "Georgia courts – and courts across the nation – protect the right to work in one's chosen profession." Furthermore, the Secretary has not shown with certainty that Jackson and ROSE have no right to relief on their due-process claim. The trial court also erred in dismissing their equal-protection claim based on an incorrect legal premise, the attorneys contend. Plaintiffs prevail in cases like this one because all members of a common profession are members of the same class and because distinctions

between members of a class must be reasonably related to the purpose of a law. (Two amicus briefs have been filed supporting Jackson and ROSE.)

The State, represented by the state Attorney General's and Solicitor General's offices, argues that although Jackson's and ROSE's arguments "might support an argument that the General Assembly made a bad policy judgment, they do not state a constitutional violation." It is enough, the State contends, "that the General Assembly conceivably could have concluded that tying the [Act's] licensing requirement to the educational and clinical training requirements for International Board Certified Lactation Consultants would promote access to quality lactation care for mothers and infants." "This Court should affirm the superior court's order," the State argues in briefs. "First, Jackson and ROSE fail to state a claim that the Act violates substantive due process under the Georgia Constitution." "Economic regulations do not violate substantive due process as long as they are rationally related to a legitimate government interest." And the lactation Act "is rationally related to the government's legitimate interests in providing access to safe, high-quality lactation care and services and otherwise protecting public health and safety." "Second, Jackson and ROSE failed to prove that the Act violates their right to equal protection of the laws guaranteed by the Georgia Constitution. That claim requires plaintiffs to show first that they are similarly situated to those treated differently by the law in all relevant respects." But Jackson and ROSE "are not similarly situated to those who hold an international board certification and qualify for licensure under the Act." The distinction the Act draws between the two types of lactation counselors is "rationally related to legitimate government interests: the General Assembly could have reasonably concluded that the level of education and training it chose for lactation consultants furthers its legitimate interest in ensuring access to quality lactation care and services for Georgia's mothers and infants," the State argues.
Attorneys for Appellants (Jackson): Yasha Heidari, Renee Flaherty, Jaimie Cavanaugh
Attorneys for Appellee (State): Christopher Carr, Attorney General, Isaac Byrd, Dep. A.G., Kirsten Daughdril, Sr. Asst. A.G., Melissa Tracy, Asst. A.G., Andrew Pinson, Solicitor General, Ross Bergethon, Dep. Sol. Gen.

THE STATE V. LANE (S19A1424)

The State is appealing a **DeKalb County** court's grant of a new trial to a man convicted of murder and sentenced to life in prison with no chance of parole.

FACTS: According to the State's case at trial, in December 2011, **Antiwan Lane** hired Kevin Stallworth to murder Hector Gonzalez. Stallworth instead killed Gonzalez's cousin, Ivan Perez, which the State claimed was due to mistaken identity. The State argued that the murder for hire resulted in the death of the wrong target. Lane's attorney argued that Stallworth acted alone, Perez was the intended target, and there was no murder for hire. After Lane and Stallworth were indicted for malice murder, felony murder, aggravated assault, possession of a firearm during the commission of a felony, and criminal solicitation, Stallworth pleaded guilty and agreed to testify for the State at Lane's trial. Following an April 2013 trial, the jury convicted Lane on all counts and he was sentenced to life without parole. Lane's attorney filed a motion requesting a new trial, and in April 2019, the trial court granted it, concluding that Lane had been denied his constitutional right to effective assistance of trial counsel and that the prosecutor for the State had committed various violations of the Rules of Evidence, the Rules of Criminal

Procedure, and the Confrontation Clause of the Constitution during Lane's trial. The State now appeals to the Georgia Supreme Court.

ARGUMENTS: The State argues the trial court improperly granted Lane a new trial and this Court should reverse the order and uphold Lane's 2013 conviction. In its brief, the District Attorney's office lays out 10 errors it claims the trial court made, arguing that "the trial court misapplied current case law and did not consider whether any of the trial court's rulings or the trial attorney's performance reasonably affected the outcome of the trial. The State contends that none of Lane's claims resulted in any harm to Lane."

Lane's attorney argues that there was no dispute that Stallworth shot and killed Perez. Stallworth confessed, pleaded guilty, and testified at Lane's trial that he was the murderer. "The issue at trial that was hotly disputed was whether Stallworth killed Perez (either intentionally, or because he thought Perez was somebody else) because Mr. Lane paid him to do so," Lane's appeals attorney argues. In his brief, the attorney responds to each of Lane's arguments. Among them, Lane's appeals attorney argues that Lane's trial attorney provided ineffective assistance of counsel in violation of Lane's constitutional rights by failing to object to the introduction of "similar transaction evidence" involving two prior shootings. Prior to trial, the State failed to give notice to the defense that it planned to introduce the evidence of two other shootings, as it was required to do. "Had it been properly noticed, it would have been excluded because the two other shootings were not shown to have involved Mr. Lane," the attorney argues.

Attorneys for Appellant (State): Sherry Boston, District Attorney, Destiny Bryant, Sr. Asst. D.A.

Attorney for Appellee (Lane): Donald Samuel

2:00 P.M. Session

<u>JOHNSON V. THE STATE</u> (S19A1404)

A young man who was on probation as a first offender when he shot and killed a man in self-defense is appealing a **Bibb County** judge's pre-trial denial of his motion to dismiss the charges against him on the ground he was immune from prosecution.

FACTS: In June 2016, **Frederick Lydell Johnson, Jr.** moved into Tranzey Johnson's (no relation) apartment in Macon, GA, over the objection of her former boyfriend, Tyrell Jordan. Soon after, Jordan showed up uninvited at the apartment and confronted the couple. Refusing to leave, Jordan was clearly angry and acted menacingly. When Johnson came out of the bathroom, Jordan grabbed him and pushed him onto an air mattress on the floor of one of the bedrooms. With Jordan on top and beating him, Johnson pulled a Glock .45 caliber handgun from his pocket, reached around so the muzzle pointed up at Jordan and fired a shot. As Jordan continued to beat him, Johnson fired a second shot. Jordan then rolled off him and Johnson escaped. Jordan died from the wounds and Johnson turned himself in later that day. At the time of the shooting, Johnson was on probation as a felony first offender.

In August 2018, a Bibb County grand jury indicted Johnson for malice murder, felony murder, and possession of a firearm by a first offender probationer. On Feb. 5, 2019, the State filed a motion to prevent Johnson from raising the defense of justification or self-defense at trial, arguing that Johnson was on felony first offender probation and therefore illegally in possession

of a firearm at the time he used it to fatally shoot Jordan. The State argued that Johnson also was prohibited from using the immunity statute prior to his trial. Less than a week later, Johnson's attorney filed a motion to dismiss the indictment, asserting Johnson was justified in shooting Jordan because he did so in self-defense and was therefore immune from prosecution based on Georgia Code § 16-3-24.2, which states that a person who uses threats or force in defense of self or others "shall be immune from criminal prosecution…unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person…." The trial court granted the State's motion, ruling that Johnson was not entitled to immunity pre-trial, nor would he be allowed to raise a justification defense at trial. Johnson now appeals the pre-trial ruling to the state Supreme Court.

ARGUMENTS: Johnson's attorney argues that the trial court "misinterpreted" Georgia Code § 16-3-24.2 "by failing to construe this statute together with other statutes related to the same subject matter and, thus, erroneously concluded that a first offender probationer who uses a firearm in self-defense was not entitled to immunity." In its 2014 decision in *Hartley v. Agnes Scott College,* the Georgia Supreme Court stated that "all statutes relating to the same subject matter are to be construed together, and harmonized wherever possible." Georgia Code § 16-3-21 states that, "A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force." It is a general statute that applies to the category of "all people, with no specific limitation," Johnson's attorney argues. "All persons who use force in defense of self or others may avail themselves of this statute." Furthermore, on July 1, 2014, the Georgia legislature enacted the "Safe Carry Protection act" (popularly known as "The Guns Everywhere Act"), which "illuminates a legislative intent to *expand* the use of the immunity and justification statutes" to previously prohibited persons. The legislature also enacted § 16-11-138, which states: "Defense of self or others…shall be an absolute defense of any violation under this part." "Thus, this new code section says that even on a charge of possession of a firearm by a first offender probationer, a crime identified in 'this part' at § 16-11-131 (b), that person may avail him- or herself of the justification statutes so long as the person has acted defensively 'as contemplated by and provided for under Article 2 of Chapter 3 of Title 16' (the justification statutes)," Johnson's attorney argues. The trial court also erred in granting the State's motion to preclude Johnson from raising the defense of justification under Georgia Code § 16-3-21 (b) (2), the attorney argues. "Since later-enacted specific statutes that conflict with earlier-enacted general statutes control, in order to give meaning to the various statutes, it follows that just as a first offender probationer is now entitled to immunity, that a first offender probationer is also entitled to a justification defense at trial." "Appellant [i.e. Johnson] asks this Court to reverse the trial court on both rulings," Johnson's attorney concludes in briefs. "Johnson should be entitled to immunity under Georgia Code § 16-3-24.2 and he should be allowed to raise a justification defense under Georgia Code § 16-3-21, as well as any other justification statute that may apply to his facts."

The State argues that Johnson was not entitled to immunity under § 16-3-24.2 "because he was on first offender probation at the time he used a firearm in self-defense." The statute specifically states that "a person who uses threats or force *in accordance with* Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is

unlawful by such person under Part 2 of Article 4 of Chapter 11 of this title," the State points out. "On the date of the incident, the Appellant was on probation as a felony first offender….Possession of a firearm by a first offender probationer is a felony." The State acknowledges that "*arguably,* following the 2014 signing of the Safe Carry Protection Act," convicted felons and first offender probationers illegally in possession of a firearm "are no longer prohibited from asserting they are immune from prosecution." However, "The State is not aware of a case that applies the new, amended version of § 16-3-24.2 to this issue….," although the Georgia Supreme Court's 2016 decision in *State v. Amos* may shed some limited guidance, the State says. Even so, "A criminal defendant who is a convicted felon or first offender probationer is prohibited from asserting justification if he is engaged in the felony of possessing a firearm at the time that he was defending himself," the State contends. "It follows then that even after § 16-3-24.2 was amended, the Appellant is still prohibited from availing himself of the immunity statute." The State argues Johnson also was precluded from raising the defense of justification under § 16-3-21 "because he was on first offender probation at the time he used a firearm in self-defense." Georgia Code § 16-3-21 states that a person is justified in using force if he believes such force is necessary to defend himself against another's imminent use of unlawful force. However the statute says a person is not justified in using force "if he is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony." Under the Georgia Supreme Court's 2017 decision in *Austin v. State*, "a criminal defendant who is a convicted felon or on felony first offender probation is again prohibited from asserting self-defense if he is engaged in the felony of illegally possessing a firearm at the time that he was defending himself," the State argues. "Because the Appellant was on first offender probation at the time of the shooting, his possession of a firearm was a felony, and his use of force with that firearm may not be justified."
Attorney for Appellant (Johnson): Franklin Hogue
Attorneys for Appellee (State): K. David Cooke, Jr., District Attorney, Jason Martin, Asst. D.A.

ROSEBORO V. THE STATE (S20A0159)

A young man is appealing his conviction and life prison sentence for the murder in **DeKalb County** of one man and the shooting of another during a drug deal.

FACTS: On Nov. 28, 2015, Kendrick Ellison received a text from Hoye Rashad Anderson saying he wanted to buy five grams of marijuana and five tablets of Percocet, a prescription pain medication. Ellison and Anderson had known each other since high school. Willie Deandre Jackson drove his friend, Ellison, to the intersection of Stonebridge Loop and Rockbridge Road in Lithonia, where Anderson had told Ellison to meet him. When they arrived at the intersection, Jackson and Ellison pulled up behind a parked car. Anderson got out of the car, along with a man in a black hoodie Ellison did not know, and approached the car where Jackson and Ellison sat. During the ensuing drug deal, the man in the hoodie – later identified as **Raekwon Roseboro** – suddenly began firing, shooting Jackson in the head and Ellison in the neck. Jackson's foot pressed the accelerator, causing the car to drive into traffic and crash into a ditch. Jackson died within a few minutes of being hit; Ellison was able to escape the vehicle, which caught fire after the crash, and survive his injuries. Ellison was transported to a hospital

where he gave police a statement that the person who had shot him was the "guy with the hoodie on."

Roseboro and Anderson were indicted for malice murder and other crimes related to the shooting death of Jackson and the shooting of Ellison. Prior to trial, Anderson worked out a plea agreement with the State, pleading guilty to the less serious crime of voluntary manslaughter and agreeing to testify for the State against Roseboro. At Roseboro's trial, Ellison identified Roseboro as the shooter, based on photographs obtained from Anderson's phone and shown to Ellison by the District Attorney less than a week before the trial. Anderson also testified that Roseboro was the shooter. The jury found Roseboro guilty on all counts and he was sentenced to life in prison. Roseboro now appeals to the Georgia Supreme Court.

ARGUMENTS: Roseboro's attorney for his appeal argues that Roseboro's trial attorney provided "ineffective assistance of counsel," in violation of Roseboro's constitutional rights, by failing to challenge Ellison's identification of Roseboro as the shooter. "Trial counsel failed to move to suppress the suggestive photographic identification conducted with Mr. Ellison by the District Attorney's office the week prior to trial," the attorney argues in briefs. "Here, counsel labored under a misapprehension of the facts leading him to fail to challenge the only piece of direct evidence in the State's case which corroborated the co-defendant's testimony." Roseboro's convictions and sentence should be reversed, his attorney argues, and his case should be remanded to the trial court for a new trial.

The State, represented by the District Attorney's and Attorney General's offices, argues that Roseboro received effective assistance from his trial attorney, and his constitutional rights were not violated. Under the U.S. Supreme Court's 1984 decision in *Strickland v. Washington,* to prevail on a claim of ineffective assistance of counsel, a defendant must show two things: both that his counsel's performance was deficient and that there was a "reasonable probability" that but for the counsel's unprofessional errors, the result of the proceeding would have been different. The State argues that the trial court's ruling that Roseboro did not prove he had received ineffective assistance of counsel was correct. The trial court "properly determined Appellant [i.e. Roseboro] had not satisfied either prong of *Strickland* on this claim," the State contends, urging the Supreme Court to conclude that Roseboro's only enumeration of error lacks merit and to uphold his convictions and sentence.

Attorney for Appellant (Roseboro): Michael Tarleton

Attorneys for Appellee (State): Sherry Boston, District Attorney, Elizabeth Brock, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.

<u>THE STATE V. GOFF</u> (S20A0248)

The State is appealing a **Richmond County** court ruling that granted a new trial to a man convicted of murder and sentenced to life in prison with no chance of parole for strangling his girlfriend to death.

FACTS: In the early morning hours of July 7, 2012, **Todd E. Goff** caused the death of his longtime girlfriend, Tiffany Salter, by manual strangulation. Police learned of Salter's death when Goff's mother called 911 and told the dispatcher that Salter "started choking him and he started choking her and he thinks he killed her." Law enforcement found Salter's body lying face up and lifeless in a wooded area behind the home Salter shared with Goff. The medical examiner

with the Georgia Bureau of Investigation (GBI), who performed the autopsy on Salter, concluded she had died from asphyxiation by strangulation. The physician found fractures in Salter's hyoid bone and the thyroid cartilage in her neck. Following a three-day trial in April 2014, a jury found Goff guilty of malice and felony murder for Salter's death, and he was sentenced to life without parole.

In April 2019, Goff's attorney filed a motion requesting a new trial. At a hearing on the motion, Goff testified that although he had planned to testify at his trial, at the last minute, his attorney strongly urged him not to, telling Goff neither his brother nor his mother wanted him to testify on his own behalf. Goff said his attorney told him, "I don't need you up there. He said, 'I got this.'" The record shows that the trial judge had advised Goff of his right to testify, asking Goff if he understood that it was Goff's decision, not his attorney's, whether to testify or not. Goff said repeatedly that he understood and had decided not to testify. Unlike at his trial, at the hearing on his motion for a new trial, Goff testified about the events that had led to Salter's death. He said the two had gotten into a fight – she was 5'2" and weighed 125 pounds while he was 6' and weighed 170 pounds. "I called her a crazy bitch and when I said that it set her off pretty much and she ran up to me and she grabbed me by my throat…and we're just – you know she's grabbing. And to the point where I'm still trying to cuss at her too you know what I mean and then she grabs my testicles you know from up underneath and she's squeezing them and at that point you know I grab her back by the throat….We're going back and forth and you know she's squeezing harder and I start to squeeze harder and to the point where I see her she's starting to go limp…." On cross-examination, Goff acknowledged that he had told a different story to the investigator following his arrest, in which he denied he engaged in any kind of physical altercation with Salter the day she died.

Following the hearing on Goff's motion for a new trial, the trial judge granted his motion, finding that Goff's attorney had rendered "ineffective assistance of counsel" in violation of Goff's constitutional rights for failing to: 1) call Goff as a witness; 2) enter Goff's booking photos into evidence that showed scratch marks on his face; and 3) move for a mistrial after a recorded statement revealing that Goff was on probation was allowed into evidence. The State now appeals to the state Supreme Court.

ARGUMENTS: The State argues the trial court erred in finding that Goff's trial attorney was deficient for failing to call his client as a witness on his own behalf. The trial court improperly concluded that "Goff was his only hope of proving provocation" – a necessary element to prove voluntary manslaughter, which is a less serious crime than murder. "The trial court's conclusion, *'He had everything to gain by taking the stand,'* presupposes that the appellee [i.e. Goff] would not have been convicted of murder if he had chosen to take the stand," the State argues in briefs. "The trial court's assertion, that the 'jury had no evidence upon which to base a provocation defense,' disregards the extensive evidence of mutual combat between the appellee and the victim Tiffany Salter presented by the appellee's mother, Joanna Ciccio." The State contends that the trial attorney's advice to Goff not to testify was objectively reasonable because when Goff was arrested, his statement to the investigator contradicted the voluntary-manslaughter theory of defense. The attorney testified at the hearing on Goff's motion for new trial that, "it wouldn't be good for cross-examination purposes if he took the stand," and that he had told Goff that if he took the stand, "there are a lot of questions that you're going to be asked that you wouldn't have a good answer for." Also, the "trial court ignored the legal significance of

the fact that the appellee was informed of his right to testify, but chose not to take the stand," the State contends. And the trial court erred in faulting the defense attorney for failing to move for a mistrial after the jury heard a passing reference to Goff's probation officer in Joanna Ciccio's recorded statement to police. Finally, the trial court erred in faulting the defense attorney for failing to seek the admission of Goff's booking photos. "An objective inquiry of trial counsel's decision-making in this case invites the inexorable conclusion that it met or exceeded our reasonableness standard for professional responsibility," the State argues.

Goff's attorneys argue the trial court was correct to grant Goff a new trial as voluntary manslaughter was the only objectively reasonable legal theory of defense to pursue in this case. "In order for the jury to find Goff committed voluntary manslaughter they needed to find that he acted solely as the result of a sudden, violent and irresistible passion resulting from serious provocation sufficient to excite such a passion in a reasonable person," the attorneys argue. "For the jury to find Goff committed involuntary manslaughter, they had to find that he caused the death without any intention to do so by the commission of an unlawful act other than a felony…." The medical examiner testified that Salter sustained a fracture of both her hyoid bone and thyroid cartilage and concluded the manner of death was homicide by strangulation. The trial judge instructed jurors on the law for both types of manslaughter, but Goff's trial attorney testified that he was "trying the case toward more of an involuntary by the commission of a misdemeanor" – what Goff's attorneys call a "factually implausible" strategy. The attorney offered no evidence "from which a jury could have found that Salter's death was the result of misdemeanor battery or some type of lawful conduct as required by law for involuntary manslaughter." Goff's testimony was the only evidence that could have supported voluntary manslaughter. "Goff's testimony included ample evidence of provocation about Salter choking him with one hand, squeezing his testicles with another as they were 'going back and forth' in a drunken fight outside their home," the attorneys argue. "Goff was the only eyewitness and his testimony had been an integral part of the defense strategy until it was unreasonably and unilaterally abandoned by trial counsel." Finally, Goff's attorney was ineffective for failing to move for a mistrial when the jury heard that Goff was on probation at the time of the incident, his attorneys argue. Goff met his burden "by showing that if he would have testified he could have developed the evidence necessary to show adequate provocation, especially if the booking photos were entered to corroborate his testimony," his attorneys conclude. "Furthermore, the jury was tainted by hearing about his status on probation and could have drawn harmful inferences from this information that harmed his defense theory."

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