



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, April 21, 2020

10:00 A.M. Session

CAMPBELL-WILLIAMS V. THE STATE (S20A0642)

INNOVATIVE IMAGES, LLC V. SUMMERVILLE ET AL. (S19G1026)

At issue in this appeal is whether arbitration clauses in attorney-client engagement agreements are enforceable if the attorney failed to explain the potential disadvantages of arbitration to his or her prospective client before execution of the agreement.

FACTS: In October 2017, **Innovative Images, LLC** sued attorney **James Darren Summerville**, Summerville Moore, P.C., and The Summerville Firm, LLC for legal malpractice in **Fulton County State Court**. Innovative claimed that after hiring Summerville to appeal a judgment against Innovative in a civil case, the attorney failed to ask the court reporter to prepare a transcript of the proceedings. The attorney's oversight led to dismissal of the appeal by the trial court, Innovative claimed. When their attorney-client relationship was originally established in July 2013, Summerville had presented Innovative with a four-page Engagement Agreement

which included an arbitration clause that stated: “Any dispute arising under this agreement will be submitted to arbitration. . . . The decision of any such arbitrator or arbitrators shall be binding, conclusive, and not appealable.” When Innovative sued, Summerville filed a motion to compel arbitration. Innovative opposed the motion, arguing that clauses mandating binding arbitration of legal malpractice claims are unenforceable unless the client has been fully apprised of the possible disadvantages of arbitration and has given informed consent to inclusion of the provision.

The trial court ruled in favor of Innovative, finding the clause “unconscionable” and therefore unenforceable as such an arbitration clause can be enforced “only when preceded by a substantial explication of the rights affected by the clause, and such an explanation did not occur here.” In a pre-trial appeal, the Georgia Court of Appeals reversed the trial court’s denial of Summerville’s motion to compel arbitration. The intermediate appellate court agreed with the Summerville defendants that the trial court erred in denying their motion to compel arbitration on the ground that the arbitration clause was “unconscionable.” The Court of Appeals opinion explained that based on its precedent, an “unconscionable contract is one abhorrent to good morals and conscience. It is one where one of the parties takes a fraudulent advantage of another. It is an agreement that no sane person not acting under a delusion would make and that no honest person would take advantage of.” The Court of Appeals further stated that “we must bear in mind that ‘Georgia law recognizes and protects the freedom of parties to contract,’” and that “contracts will not be avoided by the courts as against public policy, except where the case is free from doubt and where an injury to the public interest clearly appears.” As to arbitration clauses, the intermediate appellate court pointed out that the legislature enacted the Georgia Arbitration Code as evidence of “the legislature’s conclusion that arbitration is not in violation of the public policy of this State and, therefore, cannot be said, per se, to be unconscionable. Furthermore, an arbitration clause is not unconscionable because the contracting parties have differing levels of sophistication or different understandings of how arbitration is conducted.” The Court of Appeals found that in this case, “there was no evidence that the Summerville defendants took advantage of Innovative, fraudulently or otherwise. Nor was there any evidence that Innovative was induced by the Summerville defendants to forego reading the engagement agreement or inquiring into any of its terms, including the arbitration clause.” Innovative now appeals to the state Supreme Court, which has agreed to review the case to determine whether an attorney is required to fully apprise a prospective client of the advantages and disadvantages of arbitration before including a clause mandating binding arbitration of legal malpractice claims in the parties’ engagement agreement.

ARGUMENTS: The attorney for Innovative Images argues that under the Georgia Rules of Professional Conduct, “an attorney is required to fully apprise his or her client of the advantages and disadvantages of arbitration before including a clause mandating binding arbitration of legal malpractice claims in the parties’ engagement agreement.” Under Rule 1.4 (b), a lawyer is required to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Under the American Bar Association Formal Ethics Opinion 02-425: “The lawyer’s duty to explain matters to a client expressed in Rule 1.4 (b) derives in large measure from the lawyer’s fiduciary duty to clients and includes the duty to advise clients of the possible adverse consequences as well as the benefits that may arise from the execution of an agreement.” As Innovative’s attorney points out,

however, “it is true that the Supreme Court of Georgia has not yet addressed whether ABA Formal Opinion 02-425 should be adopted as the proper interpretation of Georgia Rules of Professional Conduct Rule 1.4 (b).” Under Georgia law, the “lack of full disclosure of the advantages and disadvantages of arbitration renders a mandatory arbitration clause unenforceable,” Innovative’s attorney argues in briefs, urging the Supreme Court to reverse the Court of Appeals decision.

The Georgia Supreme Court specifically asked the parties to answer this question: “Under the Georgia Rules of Professional Conduct, is an attorney required to fully apprise *his or her client* of the advantages and disadvantages of arbitration before including a clause mandating binding arbitration of legal malpractice claims in the parties’ engagement agreement?” In this case, however, “Petitioner was not *a client* of Respondents when Petitioner was offered the engagement agreement,” attorneys for Summerville argue. Petitioner, i.e. Summerville, “was a *prospective client*, which this Court, in the very Rules in question, concedes is different than a client.” Comments to the Preamble of the Georgia Rules of Professional Conduct state that, “Most duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer render legal services and the lawyer has agreed to do so.” Consistent with the rules, “Georgia courts have repeatedly held that a lawyer’s responsibilities to a client do not begin until and unless an attorney-client relationship is formed,” the attorneys argue. Therefore, in this case, “answering the question of whether a lawyer needs to make certain disclosures to *a client* would not resolve the dispute presented to the parties in this case.” Nothing in the Rules of Professional Conduct precludes a lawyer from offering an engagement agreement with an arbitration provision, the attorneys contend. Finally, “Not giving legal advice to a prospective client about a proffered engagement agreement does not render an arbitration provision unenforceable.” “There is nothing inherently unconscionable about an arbitration provision and encouraging that dispute resolution process furthers Georgia’s public policy,” Summerville’s attorneys conclude, urging the Supreme Court to affirm the Court of Appeals decision.

Attorney for Appellant (Innovative): Warren Hinds

Attorneys for Appellee (Summerville): Kathryn Whitlock, Kelli Steele

MEDINA V. THE STATE (S20A0505)

A man who shot and killed a stranger in his home is appealing a **DeKalb County** court ruling that denied his motion to prevent a retrial against him on double jeopardy grounds after the jury found him not guilty of malice murder.

FACTS: Terrance Nelson Medina owned the home on South Ponce de Leon Avenue in Atlanta where he had grown up. Medina was married and the couple had a small child but the three apparently lived elsewhere. The house was not in the best condition, but power and water were still on. Medina later testified that vandals had previously broken into the house despite no trespassing signs and that he had found drug needles inside. Medina, who had served in the U.S. Navy, had a Bachelor’s and Master’s degree in computer science from the University of Georgia and worked as a software engineer for Utility Associates. The morning of July 20, 2015, Medina went to work but later decided to check on the family home. When he arrived, he found signs of forcible entry. Medina later testified that he was carrying a 9-millimeter pistol, which was registered and for which he had a valid permit. When Medina went upstairs, he found a man he did not know lying naked on a mattress with a sheet over him. Medina said the man, later

identified as James Gordon Thornton, started acting menacingly toward him, so Medina drew his weapon and ordered Thornton to show him his hands. Medina testified that the stranger, Thornton, was advancing toward him and acting erratically despite his commands to stop. When Medina shoved him back, the man snapped and flew into a rage, screaming, yelling, and waving his arms. Medina said he was scared for his life, and as Thornton again advanced toward him, Medina fired a single shot, hitting the man in his chest, which killed him. Medina then called 911. When police arrived, Medina was on the front porch waiting for them and told them where to find the man. He told them he was the owner of the home and that he had a weapon on his waist. Police removed Medina's weapon and he was arrested without incident.

In February 2016, a DeKalb County grand jury indicted Medina for one count each of malice murder, felony murder, aggravated assault, and possession of a firearm during commission of a felony. On Jan. 15, 2019, after two days of deliberation, the jury reached a verdict of not guilty for malice murder but was deadlocked on the remaining issues. The trial court declared a mistrial on all four counts of the indictment and ordered Medina be retried. Before the retrial was set to begin in September 2019, Medina filed a "plea in bar based on double jeopardy," asking the trial court to bar further proceedings on the grounds that jeopardy had "attached," and the doctrine of collateral estoppel barred further prosecutions. Being convicted of the same crime twice is known as "[double jeopardy](#)" and is prohibited according to the 5th Amendment to the U.S. Constitution. "Collateral estoppel" is a legal doctrine that prevents the relitigation of facts already resolved in a defendant's favor by a final judgment. Following a hearing, the trial court denied Medina's Plea in Bar. Medina now appeals to the Georgia Supreme Court.

ARGUMENTS: Medina's attorney argues the trial court erred in declaring a mistrial as to all counts in the indictment after the jury published in open court a verdict of not guilty as to the malice murder count. "It was at that moment that the foreperson having announced it had come to a unanimous decision as to count one, delivered the verdict form to the bailiff indicating that decision, and having that verdict published in open court that the verdict had secured its validity," the attorney argues in briefs. "The trial court's subsequent action of declaring a mistrial was procedurally incorrect, improper, and in direct contradiction of the jury's true verdict." Under the Georgia Supreme Court's 1973 decision in *Jackson v. State*, this Court "is not privileged to invade the province of the jury and avoid its verdict unless from clear necessity." A motion for mistrial, by its very nature, seeks to end the trial proceedings before a verdict is rendered in order to ensure that the defendant may receive a fair trial. As a result, "once the jury returns its verdict, the trial has ended and the time for granting a mistrial has passed." "Accordingly, if it is to be declared at all, a mistrial must be declared prior to the return of a verdict," Medina's attorney argues. "Here, the trial court announced its *intention* to declare a mistrial, but subsequently summoned the jury and published the verdict before eventually declaring a mistrial." The court also erred in failing to grant Medina's "double jeopardy collateral estoppel motion" as to all four charges when the jury acquitted Medina of malice murder based on Medina's defense of justification or self-defense. "The double jeopardy clause in the fifth amendment to the United States Constitution provides: 'Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.'" In this case, "it is evident that the sole critical issue of ultimate fact that the jury necessarily decided was whether

the prosecution had proved beyond a reasonable doubt that Appellant [i.e. Medina] did not act in self-defense concerning all of the charges of the indictment.”

The State, represented by the District Attorney’s office, argues the trial court did not err in declaring a mistrial as to all counts in the indictment. After two days of jury deliberations, the jury indicated it had reached a verdict on the malice murder count but not on the others. After consulting with the parties, the judge, in front of the jury, stated, “I am going to declare a mistrial,” the State contends in briefs. The parties then sought clarification as to whether the trial court was granting a mistrial on all four counts or just the three on which the jury was deadlocked. “Both the State and Medina indicated that they desired for the trial court to declare a mistrial on all four counts of the indictment,” the State argues. The trial court clarified that its mistrial “declaration” applied to all counts in the indictment. “There was no objection from the parties,” the State contends. “As a courtesy and for the benefit of the State and Medina, the trial court, not the jury foreperson, read the jury’s not guilty verdict as to malice murder in open court, which was filed. The trial court then explained to the jury again that it was declaring a mistrial.” The State acknowledges that under several appellate rulings, “once the jury returns its verdict, the trial has ended and the time for granting a mistrial has passed.” Here however, “the trial court declared a mistrial on all four counts before the trial court read the jury’s verdict as to malice murder,” the State contends. “Furthermore, because Medina requested and consented to the mistrial on all four counts, he is now precluded from using the grant of a mistrial as the basis of a plea of double jeopardy.” “Accordingly, Medina has not been subjected to double jeopardy and the Court should find that the State may take the case to trial again on all counts lodged in the indictment against Medina.” The trial court also did not err in failing to grant Medina’s “double jeopardy collateral estoppel motion” as to all charges in the indictment, the State argues. The State takes the position that the trial court properly denied this claim “since it had already declared a mistrial as to all four counts of the indictment before it read the jury’s verdict.”

Attorney for Appellant (Medina): Dwight Thomas

Attorneys for Appellee (State): Sherry Boston, District Attorney, Alana Driscoll, Asst. D.A., Lenny Krick, Asst. D.A.

MENDEZ V. MOATS ET AL. (S19G1095)

A man injured in a car wreck with a **Polk County** sheriff’s deputy is appealing the Georgia Court of Appeals dismissal of his lawsuit against the sheriff and deputy. The Court of Appeals dismissed the suit because although the man gave proper notice of his intent to sue to the county, he failed to serve notice on the sheriff himself.

FACTS: On Aug. 15, 2015, **Efrain Mendez** was driving his vehicle through an intersection in Cedartown, GA when Deputy Sheriff Kathryn Allred, who was on duty and driving a county-owned vehicle, approached from the opposite direction and attempted to make a left-hand turn without yielding to oncoming traffic. As a result, her patrol car crashed into Mendez’s car, and he was injured.

On Jan. 21, 2016, Mendez’s attorney sent an “ante-litem” notice to the chairman of the Board of Commissioners of Polk County, notifying the county that Mendez intended to sue Polk County Sheriff **Johnny Moats**, in his official capacity, as well Deputy Allred. The attorney did not send a separate ante-litem notice to the sheriff. On Aug. 9, 2017, Mendez filed his lawsuit against Moats and Allred, alleging that he suffered injuries in an automobile wreck caused by

Allred's negligent driving of a county-owned patrol car and that Moats was vicariously liable for his employee's negligence. Moats and Allred filed a motion to dismiss the case, arguing in part that Mendez's failure to send an ante-litem notice to Moats or the Polk County Sheriff's Office barred any claim against Moats or Allred. The trial court denied their motion. However, on appeal, the Georgia Court of Appeals reversed the trial court's denial, ruling that Mendez had failed to give proper ante-litem notice as required by Georgia Code § 36-11-1, the ante-litem notice statute for "claims against counties," which states that, "All claims against counties must be presented within 12 months after they accrue or become payable or the same are barred...." The state's intermediate appellate court ruled that Mendez had failed to give proper notice because although he had served notice on Polk County through its county commission chairman, he had not served notice on Moats. Mendez now appeals to the Georgia Supreme Court. At issue is whether the ante-litem notice presented to the county alone – and not to the sheriff – is sufficient under § 36-11-1.

ARGUMENTS: Mendez's attorney argues that proper presentment of the ante-litem notice to the county commission chair satisfied the duty under the statute regarding the sheriff. Because any liability for the official-capacity claims against Moats ultimately would be borne by the county and its insurer, the county is the real party with interest here and therefore, notice to it alone is sufficient. The attorney argues in briefs that "under ancient and current law, Mr. Mendez's presentment to the governing authority of Polk County satisfied the statute." The Georgia Constitution expressly recognizes that sheriffs, like superior court clerks and probate judges, are county officers. As the Georgia Supreme Court explained in its 2017 decision in *Croy v. Whitfield County*, for more than 100 years, our courts have held that "presentment is properly directed to the governing authority of the county." The county and the sheriff are distinct, and the county leadership, not the sheriff, is the governing authority. As such, the county is the entity responsible for allocating a budget to the sheriff and ultimately funding any settlement or judgment. Also, the Georgia legislature, Mendez's attorney argues, has chosen to give ante-litem notice protection to counties and municipalities, but has not separately afforded such protection to sheriffs apart from that given to counties. When examining the sufficiency of the ante-litem notice under § 36-11-1, this Court previously has looked to the purpose of the statute, which is to provide county officials with timely notice of demands against the county so that they may investigate and resolve such claims efficiently. That purpose is served here by serving only the county, the entity with ultimate financial responsibility for Mendez's claim, his attorney argues.

Attorneys for Moats and Allred argue that the Court of Appeals correctly reversed the trial court's ruling that had denied their motion to dismiss Mendez's lawsuit. "Since sheriffs may assert the defense of entitlement to the ante-litem notice applicable to counties under § 36-11-1, plaintiffs should be required to present sheriffs sued in their official capacities with the ante-litem notice," the attorneys argue in briefs. "The sparse nature of the provisions of § 36-11-1 allows for judicial interpretation, including the interpretation that an ante-litem notice should be presented to a sheriff when the sheriff is sued in his or her official capacity." The attorneys argue that "since the statute is silent as to whom the claim should be presented to, a rule requiring presentment to the sheriff when he is the only potentially liable party, despite the claim being considered one against the county under Georgia law, is sensible." Attorneys for Moats and Allred contend that Mendez's reliance on the *Croy* decision is misplaced, as *Croy* only addressed whether notice served on the county's outside counsel could suffice as notice on the county.

From a policy standpoint, it makes sense to require separate notice to a sheriff because of the position's "unique nature...as an elected constitutional county officer." Because sheriffs have complete autonomy to determine how their funds are spent once the budget is allocated, they are entitled to the ante-litem notice, the attorneys argue. Further, because it is the sheriff and not the county who would conduct any investigation into a deputy's negligence and determine whether to compromise a claim, it is the sheriff who is entitled to the ante-litem notice. The attorneys argue that Mendez is simply wrong that the county, and not the sheriff, would be financially responsible for any judgment.

Attorney for Appellant (Mendez): Walter Furlong

Attorneys for Appellees (Moats): Ronald Womack, Steven Rodham, Ryan Ray

2:00 P.M. Session

NORRIS V. THE STATE (S20A0500)

Following a retrial, a woman is appealing her murder conviction and life prison sentence for shooting to death her father when she was 15 years old.

FACTS: In August 1997, a **McDuffie County** jury found **Melissa N. Norris** guilty of malice murder, aggravated assault, and possession of a firearm during the commission of a felony for the shooting death of her father, Barry Norris. He died from a bullet to his head which came from a .38 caliber handgun that was later found in a dumpster behind the Pizza Hut in Thomson, GA. At her trial, prosecutors for the State argued that Norris's parents had attempted to control the behavior of their 15-year-old daughter by nailing her bedroom window shut to prevent her sneaking out at night and meeting friends they had restricted her from seeing. The State said Norris was angry over the restrictions, obtained a handgun from within the home, walked behind her father as he sat on the couch, placed the gun against the back of his head, and pulled the trigger. She then texted a friend and went to a gathering at her aunt's house, where she was seen laughing and giggling with her friend, according to prosecutors. At her trial, Norris testified on her own behalf that she did not know the gun was loaded and did not intend to shoot her father, claiming it was an accident. "I was just being stupid, horsing around with this gun," she testified. She said she did not remember whether or not she pulled the trigger. Following the shooting, Norris did not call 9-1-1 and told her brother and friend that she had accidentally shot her father. Following her trial, she was sentenced to life plus five years in prison.

In 2007, the Georgia Supreme Court upheld Norris's convictions and sentence, finding that, "On December 20, 1995, Barry Norris was found shot to death in his home. Melissa Norris, who was 15 years old, confessed to her brother and to police that, after an argument with her father, she took a pistol and shot him in the back of the head at close range. Expert medical testimony showed that the victim died as the result of a contact range gunshot to the back of his head." In May 2012, Norris filed a petition for a writ of habeas corpus. (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. They generally file the action, a "petition for a writ of habeas corpus," against the prison warden.) The habeas court granted Norris a new trial, finding that she had received "ineffective assistance of counsel" from her trial attorney, who failed to request that the judge instruct jurors they could consider Norris guilty of the less serious

crime of involuntary manslaughter as a “lesser-included” offense of malice murder. Norris was retried in September 2017 and again found guilty of the same crimes, including malice murder, and she was again sentenced to life plus five years in prison. For the second time, Norris appeals to the state Supreme Court.

ARGUMENTS: At her trial, Norris’s attorney requested the judge instruct the jury about the legal defense, “mistake of fact,” but the trial court denied the request. The attorney for her appeal now argues the trial court erred in failing to give the mistake-of-fact jury charge. In 1968, the General Assembly codified in Georgia Code §16-3-5 part of the English common law mistake-of-fact defense, stating: “A person shall not be found guilty of a crime if the act or omission to act constituting the crime was induced by a misapprehension of fact which, if true, would have justified the act or omission.” “The question here is whether §16-3-5 displaces the common law principle...that a mistake of fact can apply to reduce culpability in cases of *unlawful* conduct,” the attorney argues. “Because §16-3-5 does not abolish the broader common law principle that mistake of fact can reduce culpability of doing an unlawful act, the trial court should have given the requested mistake-of-fact jury charge,” the attorney argues in briefs. “Because the mistake-of-fact charge was not given, the jurors did not know they could consider 15-year-old Melissa’s mistake about the gun being loaded.” “Because mistake of fact was supported by the evidence and was Melissa’s sole defense, a mistake-of-fact charge should have been given,” the attorney argues. “The absence of a mistake-of-fact charge practically guaranteed the murder conviction.”

The State, represented by the District Attorney’s and Attorney General’s offices, argues that the trial court properly instructed the jury and that Norris’s argument is in error as to both common law and current Georgia law. “A mistake-of-fact instruction is not required where the accused commits a criminal act and her allegedly mistaken belief would not justify that action,” the State argues in briefs. “Norris cannot show that the trial court’s instruction was in error, that the error was obvious, that the omission of the instruction likely affected the outcome of the proceedings, or that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. Norris further asks that this Court rule that Georgia courts and statutes have misunderstood the ‘mistake of fact’ defense for the last 240 years, based entirely on suggestions drawn from centuries-old texts, all of which address ‘accident’ cases, not ‘mistake of fact’ cases,” the State argues. Furthermore, “English common law did not allow a mistake-of-fact defense where actions were unlawful.”

Attorney for Appellant (Norris): Konrad Ziegler

Attorneys for Appellee (State): William Doupe, District Attorney, James Allen, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

HAMILTON V. THE STATE (S20A0483)

A man is appealing his murder conviction and life-without-parole prison sentence for the murder of his 3-year-old daughter in **Gwinnett County**, arguing that the evidence against him was insufficient to prove his guilt beyond a reasonable doubt.

FACTS: **Rodney Allen Hamilton** and his wife of 13 years lived in Massachusetts until 2011. After having two sons of their own, they became certified as foster parents in Massachusetts and eventually fostered four children. After moving to Georgia, they learned that

Hamilton's brother had a child who had been taken from the home and placed in foster care. Tamiah was born addicted to crack cocaine and diagnosed with both Hepatitis B and Hepatitis C. She was developmentally delayed and had other physical problems. The Hamiltons obtained their foster care certification in Georgia and Tamiah came to live with them when she was 18 months old. In 2014, the Hamiltons formally adopted "Maya." Hamilton's brother subsequently had another daughter who was placed in foster care and the Hamiltons took her in as well. Hamilton had worked as a pastor while in Massachusetts and continued his work in the church in Georgia. With his wife working and making more money, the couple decided that he would become a stay-at-home father to take care of their two sons and two daughters. On Jan. 30, 2015, Hamilton called 9-1-1 to report that Maya was unresponsive. According to Hamilton, she had been fine when he put her down for a nap earlier in the afternoon. After his sons returned home from school that day, he said he went to wake Maya at about 4:00 p.m. but she was unresponsive. One of her arms was locked in an extended position and her teeth were clamped down on her tongue, causing it to bleed. He prayed over her, then attempted to call his wife for guidance. He tried reaching her several times and left a voicemail. She called him about 15 minutes later and after speaking to her, Hamilton made the call to 9-1-1 – at 4:25 p.m.

When emergency medical technicians arrived, Maya's pupils were dilated and unreactive, which indicated a lack of brain activity, and her skin was pale blue due to a lack of oxygen. She also displayed neurological posturing, which indicates a lack of oxygen to the brain, and she had no motor sensory functions. Hamilton told the EMTs that she had fallen down the stairs four days earlier, but she had been normal since. The EMTs transported the little girl to Gwinnett Medical Center from which she was airlifted to Scottish Rite hospital in Atlanta. An emergency room pediatrician reviewed the child's CT scans, which revealed injuries consistent with rapid acceleration and deceleration of the head. Hamilton told the doctor about her fall down the stairs earlier in the week, but as the physician later told the jury, he believed the account was inconsistent with her injuries. He referred the case to the hospital's child abuse team based on Hamilton's explanation and Hamilton's "flat" and emotionless response to the physician's explanation that his child's prognosis was poor. Eventually, the hospital called law enforcement and child welfare officials into the case. Maya remained on life support for six days before she died Feb. 5. The medical examiner who autopsied the child said she died from a "closed-head trauma" inflicted at the hands of another. A closed-head trauma is one that does not involve a fracture to the skull but creates bleeding and swelling of the brain.

Hamilton was indicted in July 2015 for felony murder and aggravated battery for the death of Tamiah Hamilton. At trial, in addition to the emergency room pediatrician and medical examiner, two other medical experts testified for the State, including Dr. Mary Case, Chief Medical Examiner for St. Louis and a researcher in the abusive head trauma of children. A medical expert also testified for the defense, saying that he would not have ruled definitively that this case was a homicide because he was not comfortable ruling out the possibility of an accident.

Following trial, in February 2018, a jury found Hamilton guilty of both counts and he was sentenced to life in prison without parole. He now appeals to the Georgia Supreme Court.

ARGUMENTS: Hamilton's attorney argues that the circumstantial evidence did not prove Hamilton's guilt beyond a reasonable doubt because the State failed to exclude other reasonable hypotheses presented by the evidence. He also contends that when the State failed to

prove that the most damning evidence against Hamilton was scientifically reliable and had been developed using proper standards and protocols, the trial court erred by denying Hamilton's pretrial motion to exclude the evidence, which was presented by medical expert Dr. Mary Case. "While the evidence was undisputed that his daughter died as a result of a brain injury, there was absolutely no evidence, direct or circumstantial, that Mr. Hamilton was responsible, other than the fact that he was the only adult present when her most serious symptoms presented themselves," his attorney argues in briefs. "Moreover, the entirely circumstantial case presented by the State failed to exclude other reasonable hypotheses established by the evidence, including the possibility that a fall down a flight of stairs caused the fatal injury." (When a conviction is based on circumstantial evidence, the evidence must be "consistent with the hypothesis of guilt" and "exclude every other reasonable hypothesis save that of the guilt of the accused.") The most damning evidence against Hamilton came from Dr. Case, who called the little girl's brain injury one of the severest types possible, enabling the State to argue that what happened could not have been an accident. "The problem is that Dr. Case's opinions were based on scientific evidence which has never been considered by this Court and which the State failed to establish was competent, admissible evidence" under the standard set by the Georgia Supreme Court's 1982 decision in *Harper v. State*. "The trial court erroneously admitted this evidence over Mr. Hamilton's objection," his attorney argues.

The State, represented by the District Attorney's and Attorney General's offices, argues that the evidence presented at trial was sufficient to enable "a rational trier of fact to convict beyond a reasonable doubt," and circumstantial evidence excluded any reasonable hypothesis outside of Hamilton's guilt. The State also argues that the trial court properly admitted Dr. Case's expert testimony. Even if the evidence was entirely circumstantial, it excluded all other reasonable hypotheses, including those put forth by Hamilton "regarding an earlier accident, different cause of death, or complications from earlier medical conditions," the State argues in briefs. In his other argument, Hamilton challenged Dr. Case's testimony regarding her use of "Beta Amyloid Precursor Protein Staining" in diagnosing the victim with traumatic diffuse axonal injury, arguing that the BAPP testing did not satisfy this Court's test in *Harper*. However, the State provided evidence that the BAPP staining test "has reached a level of scientific reliability and was properly performed under Georgia's *Harper* standard," the State argues. "Moreover, even if some error did occur, the error is harmless and does not warrant reversal because it was inconsequential to the overall evidence at best and cumulative at worst."

Attorney for Appellant (Hamilton): Benjamin Goldberg

Attorneys for Appellee (State): Daniel Porter, District Attorney, Daniel Sanmiguel, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Ashleigh Headrick, Asst. A.G.