Supreme Court of Georgia
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SUMMARIES OF OPINIONS
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CHATMAN, WARDEN V. WALKER (S15A0260)

A man sentenced to death a decade ago for the murder of a woman, has for the time being had his death sentence thrown out under a ruling today by the Supreme Court of Georgia.

In today's unanimous opinion, written by **Presiding Justice P. Harris Hines**, the high court has upheld a lower court's ruling, which vacated Gregory Walker's death sentence after concluding that Walker's attorneys provided "ineffective assistance of counsel" in violation of his constitutional rights. The State may still seek another sentencing trial.

According to the facts at trial, on the morning of June 8, 2001, Walker, Shedrick Tate and Denise Green were asleep in a room at the Howard Johnson motel in Brunswick, GA. While they slept, Janeika Murphy – a hotel maid and acquaintance of Walker – came into the room and stole cash and a cigar box that contained marijuana and cocaine. When Walker awoke and found the money and drugs were missing, he was furious, and in a phone call that evening, told his girlfriend back home that he had discovered who had stolen the drugs and vowed "to get them."

Green, who was from Jacksonville, FL and did not know Murphy, testified at trial that at Walker's request, she later drove Walker and Tate to get something to eat. The three drove around awhile, and Walker and Tate eventually got out of the car and walked up the street to Murphy's home, leaving Green in the car. About 20 minutes later, Walker called Green and told her where to meet them. When Green arrived at the driveway of a house, she said she saw Tate in the yard with a young woman, who was Murphy. Green testified that Tate was holding a handgun and Walker ordered the woman into the car. Walker pushed her into the backseat and asked the woman how she could do this to him when he had helped pay her bills and buy items for her children. Walker directed Green to stop at a secluded area, where he, Tate and the woman

got out, and Green was directed to "go around the block." When she returned, Walker and Tate got back into the car, but the woman was no longer with them, and Walker had a gun, which he later threw from a bridge on their return to Brunswick. Walker then directed Green to drive to a Walmart to buy cleaning supplies. Green eventually dropped Walker and Tate off at Walker's house, and proceeded to the carwash to clean blood from the car's back seat, as Walker had directed. The next morning, Murphy's body was found beside Refuge Road in **Camden County**. She'd been shot in the head three times, and had additionally suffered painful blunt force injuries to the head, consistent with pistol whipping. She'd also been shot in the wrist. A man who was incarcerated with Walker told law enforcement officers that Walker had told him he'd shot Murphy with a .40 caliber handgun about four times while she was lying on the ground trying to shield her head with her arms, after Walker and Tate had beaten and dragged her from her home. The man directed officers how to find the bag of clothes Walker and Tate had been wearing.

In 2005, a Camden County jury convicted Walker of malice murder and related crimes, and following the sentencing phase of his trial, the jury recommended the death penalty. In 2006, the Georgia Supreme Court upheld Walker's convictions and death sentence. In September 2008, Walker 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 against the prison warden, who in this case was Bruce Chatman. Walker claimed in his petition that he received ineffective assistance of counsel. Under the U.S. Supreme Court's 1984 decision in *Strickland v. Washington*, to prevail on such a claim, a person must show both that his attorney's performance was deficient and that, but for that deficient performance, there was a "reasonable probability" that the outcome of the trial would have been more favorable to the defendant.

Following two hearings, in 2014, the habeas judge threw out Walker's death sentence while letting his convictions stand, concluding that Walker met the burden of proving ineffective assistance of trial counsel during the sentencing phase of his trial. The habeas court found that his attorneys had failed to adequately prepare and present "mitigating evidence" – or evidence about a person's life that the defense can present in the sentencing phase of a capital trial to argue why a defendant should be spared the death penalty. The State Attorney General, representing the Warden, then appealed to the Georgia Supreme Court.

In today's 39-page opinion, the court lays out the deficiencies of Walker's trial attorneys, who included a so-called "mitigation specialist," William Scott. Scott had billed himself as having a Ph.D. and being an expert in capital cases, but his resume reflected only a general reference to participation in capital cases and did not indicate that he held a doctorate. At the sentencing phase of the trial, the defense called only three witnesses: Scott, Dr. Earnest Miller as its psychiatric expert, and Walker's aunt, Joann Bishop. While Scott testified he found Walker to be a "good kid" and generally "unremarkable" with an "absentee mother," in contrast, Miller concluded Walker came from a dysfunctional home, witnessed brutal violence between his parents as a young child, was exposed to alcohol and drug abuse, and lost his father who was murdered when Walker was a teenager.

"Unsurprisingly, the circumstances of the mitigation investigation, including a lack of preparation and the competing conclusions about Walker, were evident at trial," today's opinion says. The high court agrees with the habeas court that the mitigation preparation was "grossly inadequate" and that "trial counsel's performance was constitutionally deficient."

"The mitigation presentation at trial in this case was inaccurate, impersonal, included few details about Walker's life, presented competing conclusions about Walker, and resulted in testimony that was off-putting to the jury," the opinion says. "As a result of trial counsel's inadequate investigation and presentation, the State was able to argue persuasively to the jury that Walker's 'childhood wasn't that bad,'…." Had trial counsel acted on Miller's recommendations, they would have discovered evidence of Walker's exposure beginning in childhood to "pervasive violence in the forms of domestic violence, physical abuse, and abusive corporal punishment, which came from nearly every adult in Walker's life who acted in a parental role." Among examples, his father abused him as a child, whipping him until he had welts on his body and calling him "worthless and stupid," according to his mother.

"Considering the combined effect of the deficiencies discussed above, we conclude that there is a reasonable probability that the absence of those deficiencies would have changed the outcome of the sentencing phase of Walker's trial. Judgment affirmed."

Attorneys for Appellant (Warden): Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Sabrina Graham, Sr. Asst. A.G., Richard Tangum, Asst. A.G.

Attorneys for Appellee (Walker): Brian Kammer, Kirsten Salchow

SMITH, WARDEN, V. MAGNUSON (S15A0281)

A man who pleaded guilty to attempting to kidnap two young boys in **Fayette County**, as well as to enticing them for indecent purposes and possessing child pornography, has had his charges and 40-year prison sentence thrown out with a decision today by the Georgia Supreme Court.

In the unanimous opinion, **Chief Justice Hugh Thompson** writes the high court has upheld a lower court's ruling that Andrew Magnuson's guilty pleas were invalid because Magnuson suffered from a mental disorder that prevented him from making an informed decision to plead guilty. The State has the option of re-prosecuting him.

Fifteen years ago, Magnuson, then 22, was accused of picking up two boys in his neighborhood in a golf cart. He talked to the boys about sex and sex toys and told them he was married and had four children with a fifth on the way. He exchanged addresses and phone numbers with the boys and asked them if they would spend the night at his house and play with his children. Magnuson later told police he intended to take the boys home so his father could molest them, although there was no evidence that the father had ever even been accused of child molestation. In 2000, Magnuson was indicted on charges of enticing a child for indecent purposes, possession of child pornography, and attempted kidnapping. In a group plea involving other defendants, Magnuson pleaded guilty to all counts of the indictment. During the plea hearing, the judge asked if any of the defendants had ever been a patient in a mental health facility or under the care of a psychiatrist, and Magnuson inaccurately answered that he had not. His attorney at the time told the judge that Magnuson had in fact been institutionalized and treated for mental health problems but that he had been found competent to stand trial. The trial court accepted his guilty pleas without inquiring further into his mental health. According to briefs filed in the case, at the sentencing hearing, the judge commented there was no facility available to treat Magnuson's problems and the judge had to weigh the protection of children versus Magnuson's liberty. He noted Magnuson's inability to control his conduct which had become so compulsive he made up to 75 obscene phone calls every two days, had climbed into a

manhole with duct tape, handcuffs and camouflage, and had computer emails about abducting a 10-year-old boy, forcibly taking him to the basement, binding him and sexually assaulting him – all of which the judge said "would be completely irresponsible to ignore." The judge then sentenced Magnuson to 40 years in prison followed by 25 years on probation.

In 2008, Magnuson filed a "petition for habeas corpus," alleging that his mental disorders prevented him from entering valid guilty pleas and his attorney rendered ineffectiveness of counsel on numerous grounds, all of which related to the attorney's failure to adequately investigate Magnuson's mental health history and condition at the time of the crimes. (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 against the prison warden.) At the habeas hearing, Magnuson's mother testified that she and her husband had adopted their son when he was a baby and he'd had mental challenges from the beginning. He was in special education classes at school and had been seen by many doctors and therapists in his childhood. She said she knew of no inappropriate conduct between her husband and son, nor had there been any allegations against her husband that were investigated by authorities. The evidence at the habeas hearing showed that from an early age, Magnuson suffered from mental disorders that required the care of psychiatrists, medications, and group therapy. Several times, he had to be hospitalized. A mental health therapist, who treated Magnuson before and after his arrest, testified that when she first met him, he had been diagnosed with bipolar disorder, was functioning at a low level of maturity and needed help with daily living skills. She said that when she saw him after his arrest, he did not understand the severity of the charges against him and believed he would only be in jail six or eight weeks. A psychologist testified that he believed Magnuson suffered from an impulse control disorder that caused him to fabricate nonsensical statements. He said that due to Magnuson's impulse control disorder and given the dynamics of a group plea, Magnuson would have answered the judge's questions in conformity with the group without understanding the consequences of his actions. Following the hearing, the habeas court granted Magnuson's petition, finding that his guilty pleas were invalid. The State then appealed.

"Our review of this case leads us to conclude that there is record evidence supporting the habeas court's determination that at the time he entered his guilty pleas, Magnuson's mental health condition prevented him from understanding the consequences of his plea," today's opinion says. Although at the plea hearing the judge advised Magnuson of the rights he would waive by pleading guilty, and Magnuson said he understood before waiving them, that does not contradict the habeas court's findings "that Magnuson suffered from a mental disorder at the time of his pleas which prevented him from understanding and truthfully answering the plea court's questions."

In today's opinion, the Supreme Court cautions in a footnote that a group plea is usually an inappropriate forum to accept a defendant's plea to a serious crime. "Courts are reminded that when a defendant is charged with a serious crime, and especially where the defendant is known to have a history of mental health disorders, it is imperative for the court to engage the defendant in an individual colloquy both to ensure the constitutional integrity of the plea and to provide appellate courts with a complete record in the event of a future challenge to the validity of the plea," the footnote says.

Attorneys for Appellant (Warden/State): Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.
Attorneys for Appellee (Magnuson): Elizabeth Brandenburg, Marcia Shein, Jerrery Talley

NORRED V. THE STATE (S15A0405)

The Georgia Supreme Court has unanimously upheld the life prison sentence given to a man who gunned down his mother and two older sisters in Athens, GA, killing one and wounding the others as they sat in the kitchen eating lunch.

A **Clarke County** jury found Richard P. Norred, who had a lifelong history of mental illness, "guilty but mentally ill" for shooting and killing Leigh Pope, 29, and wounding his other sister, Amy Norred Lefebvre, 31, and his mother, Carol Norred, 63. In his appeal, Norred's attorney argued that the only verdict supported by the evidence was "*not guilty* by reason of insanity."

In today's opinion, however, **Justice Robert Benham** writes that the high court finds that the evidence "was sufficient to authorize a rational trier of fact to find, beyond a reasonable doubt, appellant guilty but mentally ill of the crimes for which he was convicted."

According to the facts at trial, on April 20, 2010, the sisters spent the morning with their mother planting flowers at the home of Leigh Pope before returning to their mother's home for lunch. Richard Norred, 27, lived with his parents in their basement. He came upstairs looking for something to eat, and his mother offered to fix him a sandwich, according to briefs filed in the case. Lefebvre testified that she looked up and saw her brother standing in the dining room with his back to the three of them. At some point, her mother told Lefebvre if she didn't leave soon, she'd be late for a doctor's appointment, and Lefebvre got up to leave. As she did so, her sister's 1-month old daughter, Haley, who was in a car seat next to Lebebvre's seat, started fussing. Lefebvre was bending down to get Haley out of the car seat so she could hand her to the baby's mother when Norred walked into the kitchen and shot Pope in the back of the head, killing her. He then shot Lefebvre twice and his mother once in the chest, who yelled at Lefebvre to call 911. When Norred pointed the gun at Haley, Lefebvre begged him not to shoot the baby. He relented, saying, "problem's not with you anyway." Lefebvre grabbed the baby and fled to a bathroom where she joined her 4-year-old son, who was already there, and called 911. While his mother lay injured on the floor, Norred stood over her and had a conversation with her indicating he was upset about some incidents that had occurred during his childhood. He then went upstairs to a bathroom where he climbed into the bathtub and shot himself. When police arrived, they surrounded the house and instructed Lefebvre to run from the house with her child and Pope's infant daughter, which she did. Police found Pope inside on the kitchen floor, dead, and Carol Norred nearby, who survived her wounds. They found Norred upstairs, who also survived as did his sister Lefebvre. The investigation revealed that Norred had taken the gun from his father's bedroom dresser drawer, where his father thought he had kept it hidden under clothes.

The evidence showed that Norred had a history of mental disorders, starting at age 4. He was diagnosed over the course of his life with having various disorders, including attention deficit disorder, childhood schizophrenia, and Asperger's syndrome. He had remained in his parents' home after graduating from high school, refusing to work or learn to drive, go out to eat or even get a haircut. In the months leading up to the shootings, he had become increasingly withdrawn from his family, He spent his nights playing video games, with "World of Warcraft"

being his favorite, and his days sleeping and watching television. At trial his mother testified that she and her husband had recently begun discussing the possibility of having their son placed somewhere outside their home, and she believed he had been eavesdropping on them.

Norred pleaded not guilty by reason of insanity. While his attorneys filed a notice that he was incompetent to stand trial, following a competency hearing, he was found competent to be tried. There was no issue at trial as to what had happened or who had committed the act. The issue was one of criminal responsibility, with Norred's attorney arguing he did not know the difference between right and wrong. The defense expert, a psychologist, testified that Norred was suffering from Asperger's disorder, major depressive disorder and schizoid personality disorder. He said it was his opinion that Norred was incapable of distinguishing between right and wrong, or, at the very least, had a diminished capacity for distinguishing between right and wrong, and that he was suffering from delusions at the time of the shootings. A psychologist appointed by the trial court, however, testified that her opinion was that Norred met the criteria for a diagnosis of Asperger's syndrome but in terms of the legal question of criminal responsibility, he did know right from wrong at the time of the incident and "was not suffering from a delusional compulsion that overmastered his will to resist committing the crime."

In July 2012, the jury found Norred guilty but mentally ill of murder, aggravated assault, gun charges and cruelty to children. He was sentenced to life plus 30 years in prison. His attorneys then appealed, making only one argument: that the evidence was insufficient to support the jury's verdict because the evidence showed he was not guilty by reason of insanity.

"We disagree," today's opinion says.

Under Georgia law, a person is insane and cannot be guilty of a crime, "if at the time of the act, omission or negligence constituting the crime, the person did not have mental capacity to distinguish between right and wrong" in relation to the criminal act, or acted "because of a delusional compulsion as to such act which overmastered his will to resist committing the crime." A person claiming insanity much prove it by a "preponderance of the evidence," as opposed to the more stringent standard, "beyond a reasonable doubt."

The expert for the defense testified that Norred had a "diminished" capacity for distinguishing right from wrong and was delusional to the extent that he believed his family was hiding things from him and that "the world" was out to "get" him. However, the defense expert said, Norred was not under any delusion that his mother or sisters were doing anything that put him in fear for his life.

The expert for the State testified that Norred's Asperger's disorder did not impact his ability to discern right from wrong. As an example, Norred locked the house doors after the shootings because he believed the police were coming, the State's expert pointed out. That expert also opined that Norred's resistance from shooting the baby showed he was not suffering from delusions that overmastered his will.

"The trial court did not err when it entered judgment on the jury's verdicts," today's opinion says. "Judgment affirmed."

Attorney for Appellant (Norred): John Donnelly

Attorneys for Appellee (State): Kenneth Mauldin, District Attorney, Jon Forwood, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

AIKENS V. THE STATE (S15A0404)

The Supreme Court of Georgia has upheld the murder conviction and two consecutive life prison sentences given to a man for his role in randomly robbing and killing a popular high school football star as he waited at an Atlanta bus stop.

In this high-profile **Fulton County** case, the high court has unanimously rejected Maurice Aikens' arguments that he claims should lead to a reversal of his convictions. Instead, **Justice Keith Blackwell** writes for the Court, "We see no error, and we affirm," the lower court's ruling.

According to briefs filed in the case, Kyle Moore, a 17-year-old junior, was a standout student and athlete at Washington High School where he was a three-year starter on the football team. He was being heavily recruited by a number of colleges, including Harvard and Brown, and was only days away from taking his SAT college boards.

On May 3, 2007, after attending football practice, Moore took the bus to North DeKalb Mall to play Pokemon-type card games with young people who gathered there every Thursday night. After leaving the mall at about 9 p.m., he took a MARTA train to the Lakewood station, then walked to the nearby bus stop to catch the bus home.

Meanwhile, Aikens, 24, his girlfriend, Ladasha Eison, and his friend, Edward Wallace, were meeting across town at Wallace's house, where the three decided to "go and rob somebody." Wallace, 25, said the Lakewood station would be a good place to find a victim, according to Eison, who later testified for the State. After waiting behind a house near the station, they saw Moore, whom they did not know, approaching the bus stop. While Eison served as lookout, Wallace, who was armed with a black gun, and Aikens ran up to Moore and while Wallace pointed the gun at Moore, the two stole his empty wallet and cell phone. Wallace then shot Moore in the chest. After Moore fell to the ground, Wallace shot him again a number of times. A woman who lived near the station testified she watched through the window as Moore tried to get up several times after he was shot before he collapsed completely. She called 911, but Moore died at the scene. Moore's backpack was still on his person, and inside, investigators found recruitment letters from the University of Illinois and Middle Tennessee State University.

Following Moore's murder, Eison, who worked at a local Mrs. Winner's fast food restaurant, mentioned the shooting to co-workers, who subsequently called police. Eison eventually told police what had happened. Wallace's girlfriend also testified for the State that the day after the murder, Wallace said he wanted to show her where the murder had occurred. At the site, Moore's family had placed a photo and signature page for his family and friends to sign. Wallace signed the page as "Keon," which was his nickname. The following day, he and his girlfriend went to a local tattoo shop where Wallace had "unknown killer" tattooed on his arms. While searching Wallace's home, officers with the Atlanta Police Department recovered a 9-millimeter handgun which was later tied to the eight shell casings collected at the scene. They also found rap lyrics Wallace had just written, in which he said he targeted blacks and if one would not act, "I lay 'em flat. Then I put eight holes in his back."

Following a joint trial, the jury found Wallace and Aikens guilty of murder, armed robbery, aggravated assault, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. They were both sentenced to two consecutive life sentences plus 10 years in prison. In January, the state Supreme Court upheld Wallace's

convictions and sentences. In exchange for her testimony, Eison received a light sentence involving probation. In this appeal, Aikens argues that the evidence was insufficient to sustain one of his weapons charges, that the trial court erred when it responded to a question submitted by the jury, and that his trial attorney rendered "ineffective assistance of counsel."

But in today's opinion, the Supreme Court has rejected all his arguments, "and we conclude that the evidence adduced at trial was legally sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Aikens was guilty of all of the crimes of which he was convicted."

Attorney for Appellant (Aikens): Gerard Kleinrock
Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Marc Mallon, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

SMITH V. THE STATE (S15A0614)

In a 6-to-1 decision, the Georgia Supreme Court has upheld the murder conviction and life prison sentence given to a man for carjacking and killing a woman while she waited in her car for her daughter.

In this high-profile **Gwinnett County** case, **Justice Carol Hunstein** writes for the majority that the evidence against Ronald Smith – whose identical twin, Donald Smith, was originally arrested for the crime – "was sufficient to authorize a rational jury to find Appellant guilty beyond a reasonable doubt of the crimes of which he was convicted."

According to the evidence, the evening of July 18, 2008, Genai Coleman, a 40-year-old elementary school teacher, was sitting in her car at the Gwinnett Transit stop near Gwinnett Place Mall, waiting for her daughter to get off work. While she waited, Coleman was on her computer participating on a web chat room in a discussion with members of her Bible study group. Meanwhile, Ronald Smith was in a QuikTrip gas station across the street, where a store video showed him purchasing beer and Bronson Lights cigarettes and carrying a black bag. After leaving the store, Smith crossed the street and got into the passenger side of Coleman's car. He demanded she get out, and when she refused, he punched her in the face. He then got out of the car and went to the driver's side. Smith opened the door, shouted profanities at Coleman and shot her in the chest. After pulling her out of the car, he drove away while bystanders called 911.

Coleman was barely alive when police arrived and was pronounced dead at Gwinnett Medical Center. Her car was later found in the parking lot of a restaurant in Forest Park, where police found fingerprints and a cigarette butt under the driver's seat. According to briefs filed in the case, the butt was sent to the Georgia Bureau of Investigation's crime lab, which was able to extract DNA that was uploaded to a federal database. The case went cold until nine months later, when the GBI got a notice that the DNA was a match for Donald Smith, who had a prior drug-related conviction. While looking for Donald, police learned he had an identical twin brother, Ronald. As identical twins, the brothers would share the same DNA but not the same fingerprints. While both brothers' DNA matched the DNA found on the cigarette butt, only Ronald's fingerprints matched the ones found on Coleman's car. Cell tower information also showed that his cell phone was in use in Forest Park near where an off-duty police officer had seen him. Confronted with the evidence against him, Ronald Smith confessed, saying he had shot Coleman with a .357 caliber gun, a fact that officers did not know at the time.

In October 2012, a Gwinnett County jury found Ronald Smith guilty of murder, aggravated assault, hijacking, and firearm charges. He was sentenced to life plus 25 years in prison. Smith subsequently appealed to the state Supreme Court.

His single argument on appeal is that the judge improperly commented on a witness's demeanor. While being cross-examined at trial, the witness became visibly upset and started to cry. The judge took a break in the trial for her benefit and outside the presence of the jury, asked the witness why she was upset and whether she needed a break. She told him she had "so much on my mind," was facing surgery, and "I just came from the doctor." Once the jury returned, the judge explained the witness "doesn't feel well this morning. She's having some personal medical issues." He then said, "I just wanted y'all to know that the stress is not really related to this case." Smith's lawyer argued that the judge's statement that the witness's stress was not related to the trial was an improper comment that bolstered her credibility and violated Georgia Code § 17-8-57, which states it is "error for any judge in any criminal case…to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused."

"We disagree," today's majority opinion says. The trial judge did not "express a favorable opinion on [her] abilities;" did not express a "high opinion" of her; and did not clearly intimate "the court's opinion that [her] testimony was believable."

"Instead, in an attempt to secure a fair trial and the orderly administration of justice by discovering the source of the witness's distress, the court objectively and matter-of-factly told the jury of the reason for the distress," the majority states. "The trial court did not violate § 17-8-57 in doing so."

But in a dissent, **Justice Harold Melton** disagrees and writes that the judge "took a step too far." "While it is clear that the witness's medical condition likely contributed to her distress on the stand, it could be equally likely that the course of examination added to her level of distress," the dissent says. "Here, the trial court removed the jury's ability to measure the truthfulness of this testimony by instructing them that the witness's demeanor was not related to the case, only her illness." That usurpation violates the law, the dissent says, noting that the problem could have been avoided "if the trial court had simply allowed the lawyers to question the witness about her medical condition on their own."

Attorney for Appellant (Smith): Lynn Kleinrock

Attorneys for Appellee (State): Daniel Porter, District Attorney, Lisa Jones, Dep. Chief D.A., Christopher Quinn, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

WILLIAMS V. THE STATE (S15A0310)

The Georgia Supreme Court has unanimously upheld the murder conviction and life prison sentence given to Quentric Williams in **DeKalb County** for killing a man at Atlanta's Starlight Drive-in Theater.

In this high-profile case, **Presiding Justice P. Harris Hines** writes for the court that the "evidence was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Williams was guilty of the crimes of which he was convicted."

According to the facts presented at trial, the night of April 15, 2012, Williams and his girlfriend, Angel Thomas, arrived at the Starlight Drive-in a rented Ford F-150 pick-up truck and climbed into the back seat. Mitt Lenix, a 28-year-old martial arts expert, had also come to the

theater with his girlfriend and was in a car nearby. Midway through the movie, Lenix's battery died, and he approached Williams' truck to ask for a jump-start. Williams, a known drug dealer who was on probation and illegally carrying a gun, fired a single shot through the driver's side window, hitting Lenix in the chest and killing him. He later told his girlfriend he had seen Lenix approaching the truck, "ducking and dodging" between cars. He said he saw Lenix put his hand in his waistband and reach for the door of his truck. After the shooting, Williams drove the truck away from the theater and realizing DeKalb County police were following him, led them on a high-speed chase, reaching up to 100 mph and throwing cash out the window before crashing into a tree in Gwinnett County. Williams then jumped out and fled by foot, leaving his girlfriend unconscious in the truck. He was arrested the next day in a Gwinnett County hotel room.

At trial, Williams, 32, testified in his own defense, saying that as far as he knew, he did not fire the bullet that killed Lenix. He said he thought Lenix had a gun and he shot above Lenix to scare him away. Williams said he then fled because he was on probation and believed that a warrant was out for his arrest.

In May 2013, the jury convicted Williams of murder, aggravated assault, weapons charges and eluding an officer. Williams was sentenced to life without parole plus 15 years. He then appealed to the state Supreme Court, arguing in part that during closing arguments, the State prosecutor misstated the law regarding the defense of justification. Specifically, the prosecutor said that the defense theory of "self-defense" "requires by law that the defendant admits the doing of the act." "Nobody clued Quentric that if you can't admit the doing of the act, then you don't get the protection of self-defense in justification," the prosecutor told jurors.

In today's opinion, the high court agrees that the prosecutor "misstated the law so as to potentially mislead the jury." "Certainly, Williams was entitled to claim both justification and lack of causation, as '[a] defendant who pursues alternative defense theories is entitled to requested charges on both theories, if there is some evidence to support each theory," the opinion says.

However, "we conclude that no harm arose from the State's argument." If the prosecutor made a misstatement of the law, "the court made it clear that instruction on the law would come from the court, negating any harmful effect of the prosecutor's reference to what the law might require."

Williams' attorney also argued that the trial court erred when it instructed jurors about how they should use testimony of a law enforcement officer about a prior incident in which Williams fled from an officer after he'd been stopped for speeding. In today's opinion, the Supreme Court agrees that the judge's jury instruction was incomplete. However, "the failure to give the complete limiting instruction as set forth in the pattern jury instructions did not render deficient the court's instructions as to how the jury was to view the evidence of the prior incident." Furthermore, there is no likelihood that the judge's instruction "affected the jury's verdicts," the opinion says.

Attorney for Appellant (Williams): Gerard Kleinrock

Attorneys for Appellee (State): Robert James, District Attorney, Deborah Wellborn, Asst. D.A., Zina Gumbs, Asst. D.A., A'Sheika Penn, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Andrew Sims, Asst. A.G.

THE STATE V. JONES (S14G1061)

A man's convictions in **Cherokee County** for Driving Under the Influence could ultimately be reinstated under a ruling today by the Supreme Court of Georgia.

With today's opinion, the high court has reversed a decision by the Georgia Court of Appeals, finding that the appellate court was wrong to reverse Michael W. Jones' convictions after determining that evidence of a prior conviction for driving drunk was inadmissible under Georgia's new Evidence Code.

Chief Justice Hugh Thompson writes for the Supreme Court that, "we find that evidence of Jones' prior conviction was admissible at trial pursuant to Rule 404 (b)" of the Georgia Evidence Code, which took effect Jan. 1, 2013. The high court is sending the case back to the Court of Appeals with direction.

According to the facts of the case, on Jan. 21, 2011, Michael W. Jones was stopped by a police officer on Highway 92 for driving above the speed limit. The officer noticed that Jones' eyes were bloodshot and watery and the officer detected a strong smell of alcohol from Jones' breath. According to briefs filed in the case, he asked Jones twice if he'd been drinking and both times Jones said no. Jones showed signs of impairment on three field sobriety tests and told the officer he could not say the alphabet without singing it. The third time the officer asked if he'd been drinking, Jones admitted that earlier that day, he had consumed two beers at The Twisted Tavern. The officer concluded Jones was "less safe to drive due to alcohol impairment" and arrested him for Driving Under the Influence (DUI). Jones consented to chemical testing of his breath, which showed he had a blood alcohol level of 0.147 and 0.139. In Georgia, the legal limit is 0.08. In February 2011, Jones was formally charged in state court with "DUI per se," "DUI less safe," and speeding. The State filed a motion asking to introduce at trial evidence of Jones' 2005 conviction, also for "DUI less safe." The State said the purpose was to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." At a pretrial hearing, the State narrowed the purposes for which it was entering the evidence to show Jones' intent and knowledge. The State argued the "similar transaction evidence" was necessary to show it was no accident that Jones had driven after becoming impaired, that he had denied drinking based on knowledge gained from his previous arrest, and that the previous arrest showed Jones' intent to drive under circumstances he knew to be both illegal and dangerous. Following a hearing, the trial court ruled in the State's favor, finding that Jones' prior DUI conviction was relevant to "the fact that he's aware of what [drinking alcohol] did to him the first time and this is what it did to him the second time." As a result, at trial the jury heard evidence that in 2005, Jones was stopped by an officer for driving erratically. The officer from that incident testified he smelled alcohol coming from Jones, observed his eyes were bloodshot and glassy and his speech was slurred. Jones admitted he had drunk "a few" beers, later stating he'd drunk about four "adult beverages." He showed signs of impairment on the field sobriety tests, and the officer arrested him for DUI after concluding Jones was "less safe to drive." Jones' blood alcohol level measured 0.195. At trial on the more recent charges, Jones' defense attorney told jurors the State had introduced the similar transaction evidence to anger them and plant in their minds the suggestion that because Jones had committed one DUI, he must have committed another. The State said in response that the officers who testified about the prior DUI were not there to paint Jones as a bad man but to show that in the second instance, he intended to conceal his impairment because he now understood the consequences.

In January 2013, the jury found Jones guilty of all charges. Jones appealed, and the Court of Appeals reversed the DUI convictions, finding the trial court erred in allowing in evidence of the prior conviction because it was "not relevant to, or probative of, the commission of the crime charged." The appellate court noted that before the new Evidence Code was enacted, allowable purposes for admitting similar transaction evidence included course of conduct and bent of mind. But Rule 404 (b) the new Evidence Code (Georgia Code § 24-4-404 (b)) did not mention bent of mind or course of conduct as permitted purposes. Even under the prior statute, the ultimate issue was not the similarity in the crime but "relevance to the issues in the trial of the case," the appellate court stated, concluding that the trial court erred in permitting the similar transaction evidence to prove intent or knowledge because the crime of DUI Less Safe does not require proof of specific intent to commit the crime. Furthermore, the Court of Appeals found, evidence of a prior crime is "highly and inherently prejudicial, raising as it does, an inference that an accused who acted in a certain manner on one occasion is likely to have acted in the same or in a similar manner on another occasion and thereby putting the accused's character at issue." The State appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred. This appears to be the first case to address whether under the new Evidence Code, evidence of a prior DUI conviction is admissible in a DUI trial to show intent and knowledge of the accused.

"After reviewing the record and the purposes for which this evidence was offered, we find the Court of Appeals erred by determining that Rule 404 (b) precluded its admission into evidence because it was not relevant," today's opinion says.

Rule 404 (b) of Georgia's new Evidence Code states: "Evidence of other crimes, wrongs, or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

However, Rule 403 of the Evidence Code states that even if the evidence is offered for a proper purpose, it may be excluded, "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Under the new Evidence Code, to be admissible, the State must show that the evidence of prior acts is relevant to an issue other than a defendant's character; that its value is not substantially outweighed by its unfair prejudice, or harm, to the defendant's case; and that there is sufficient proof that the jury could find the defendant committed the act in question.

The high court disagrees with the Court of Appeals' finding that it is irrelevant that Jones intentionally drove while drunk on another occasion, because the charges he recently faced do not require proof of intent.

Intent was an issue in this case, today's opinion says, "and because the same state of mind was required for committing the prior offense and the charged crimes, i.e., the general intent to drive while under the influence of alcohol, evidence of Jones' prior conviction was relevant under Rule 404 (b) to show Jones' intent on this occasion."

In conclusion, the high court finds that evidence of prior acts may be relevant under the new Evidence Code, "when it is offered for the permissible purpose of showing a criminal defendant's intent and knowledge." It is returning the case to the Court of Appeals, however,

because that court did not address whether the evidence might be inadmissible under Rule 403 of the Code, which requires an analysis of whether the value of the evidence is outweighed by prejudice, confusion or misleading the jury.

Today's opinion cautions any who assume the ruling signifies that evidence of prior acts or offenses will be admissible in every criminal prosecution to prove intent and knowledge, because "the potential for prejudice caused by the introduction of other act evidence is great, and the often subtle distinctions between the permissible purposes of intent and knowledge and the impermissible purpose of propensity may sometimes be difficult to discern. Rule 403's balancing of the need for other offense evidence against the dangers of its introduction is an important task for which, unfortunately, there is no mechanical solution."

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IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* Chaz Jensen Ballard (Clayton Co.)	**BALLARD V. THE STATE (S15A0463)**
* Dustin James Cotton (Clayton Co.)	**COTTON V. THE STATE (S15A0590)**
* Dario Reynoldo Crosdale (Clayton Co.)	**CROSDALE V. THE STATE (S15A0447)**
* James Arthur Daughtie (Richmond Co.)	**DAUGHTIE V. THE STATE (S15A0591)** (The Georgia Supreme Court has upheld Daughtie's murder conviction and life prison sentence, but thrown out his conviction and 10-year sentence for theft by receiving stolen property due to insufficiency of the evidence.)
* Lewis Dyal (Berrien Co.)	**DYAL V. THE STATE (S15A0139)** (While the state Supreme Court has upheld Dyal's murder conviction and life prison sentence, it has thrown out the conviction and sentence for aggravated assault, which should have merged into the murder conviction for sentencing purposes as it did not require any proof of fact beyond what was required to prove malice murder.)
* Brandon Jaron Norwood (Clayton Co.)	**NORWOOD V. THE STATE (S15A0379)**
* Ricky Smith, Sr. (Newton Co.)	**SMITH V. THE STATE (S15A0296)**
* Singlee Soun (Clayton Co.)	**SOUN V. THE STATE (S15A0464)**
* Mack Trimble (Colquitt Co.)	**TRIMBLE V. THE STATE (S15A0040)**
* Adrian White (Fulton Co.)	**WHITE V. THE STATE (S15A0319)**

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

* Charles B. Merrill, Jr. **IN THE MATTER OF: CHARLES B. MERRILL, JR. (S15Y1102)**

The Court has accepted a petition for voluntary discipline and ordered the **indefinite suspension** of attorney:

* David P. Rachel **IN THE MATTER OF: DAVID P. RACHEL (S15Y0830)**

The Court has accepted a petition for voluntary discipline and ordered a **Public Reprimand** of attorney:

* William F. Heitmann, III **IN THE MATTER OF: WILLIAM F. HEITMANN, III (S15Y1117)**

The Court has accepted a petition for voluntary discipline and ordered a **Review Panel Reprimand** of attorney:

* Neville Trevor Francis **IN THE MATTER OF: NEVILLE TREVOR FRANCIS (S15Y1117)**