



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, May 10, 2016

10:00 A.M. Session

SMITH V. ONE BIRD, LLC ET AL. (S16A0934)

A man is appealing a **Montgomery County** court ruling that a golf course may continue using the man's newly purchased land for its golf cart path, tee box and green because it has been doing so for 20 years.

FACTS: In 1989, Farm Credit Bank of Columbia, now AgSouth Farm Credit, sold about 400 acres lying in both Montgomery and Toombs counties to Edward Herndon. AgSouth financed Herndon's purchase and received a security interest in his property as a result. Over the years, AgSouth released various parcels for home lots. In 1992 it released about 207 acres of Herndon's property for a golf course, which was built that year and included cart paths and fairways. The documents recorded in court files referred to the golf course, but the recorded plats and boundary descriptions did not include the three tracts of land that would later become central to this dispute. In August of that year, Herndon sold the golf course to Foxfire Golf Course, which then sold it to Three Bird, LLC. Three Bird ultimately sold the golf course to One Bird, LLC and its sole member, Wallace Adams, Jr. AgSouth continued to release other tracts from its security deed as Herndon developed and sold additional properties. But Herndon eventually defaulted on his loan, and AgSouth moved forward with foreclosure proceedings. In a public sale, AgSouth sold three parcels of land – a 0.32 acre tract, a 0.38 acre tract, and a 2.85 acre tract

– to Vidalia Investment Partners, Inc., which in 2013 sold the three parcels to Charles D. Smith for \$10,000. Smith immediately filed in court a “petition to quiet title” against One Bird and Adams, hoping to clear up any questions over who owned the three tracts of land. A petition to quiet title is brought to resolve disputes over who owns a piece of property. One Bird filed a counterclaim, asserting that it had acquired an interest in the three tracts through “adverse possession” because for more than 20 years, it had used portions of the property as part of its golf course. Under Georgia law, one may acquire title to land if he/she can show continuous use of the land for at least 20 years. After a jury trial resulted in a deadlocked jury and mistrial, the judge ruled in One Bird’s favor, finding it had a “prescriptive easement,” or the right to use and control the land “over and across the cart path, the tee box, and the green located upon the 0.32 and 0.38 acre tracts and the cart path located upon the 2.85 acre tract as it has had more than 20 years of adverse possession.” Smith now appeals to the Georgia Supreme Court.

ARGUMENTS: Smith’s attorney argues that the holder of a security deed, or a mortgagee, is immune from adverse possession, or “title by prescription” claims. “Prescription” is the legal term used for acquiring title to property by continuous possession over a period of time that is set by statute. Therefore, the trial court erred in finding that the title held by the mortgagee, AgSouth, was subject to prescriptive title claims. “The facts of this case are not in dispute,” the attorney argues in briefs. “The chain of title by which [Charles Smith] took possession of the property at issue originated under AgSouth’s purchase money security deed. Georgia law mandates that prescription cannot run against the holder of a security deed. In this case, the trial court ignored the law and held otherwise.” (“Chain of title” is the ownership history of a piece of land that lists every owner and successive owner.) “The protection for the lender under a deed to secure debt, and the subsequent purchasers under its chain of title, has been reaffirmed” by recent court decisions. As a successor to AgSouth’s interest in the property, Smith “holds title free and clear of any and all encumbrances,” his attorney argues. The trial court also erred in considering inadmissible evidence. Its conclusion that AgSouth intended to release the entirety of the golf course from the security deed was based on an application for release, comments from an AgSouth agent, and an unrecorded plat contained in AgSouth’s files. None of that evidence should have been considered to modify the recorded documents, Smith’s attorney argues. According to the trial judge, “AgSouth, at the time it foreclosed, did not know that part of the golf course was on any of the parcels that it foreclosed upon, which includes the parcels at issue here. The reality of the situation is that for more than 20 years no one knew the recorded plats did not include the three parcels in question. It was AgSouth’s intent to release the golf course, and the records reflect they released the course, and thus AgSouth’s security deed could not have constituted actual or constructive knowledge of any lien of AgSouth.” But it reached that conclusion by relying on unrecorded documents, which reformed the terms of the recorded releases. It was also error for the trial court to conclude that Adams and One Bird had no actual or constructive notice of the AgSouth security deed. “It is the sole responsibility of the developer and subsequent purchasers to ensure that the golf course was built within the property lines,” Smith’s attorney argues. “Repeatedly, it was the failure of the Appellees [i.e. Adams and One Bird] to properly investigate or resolve the property issues that leaves them in the position of now not owning or having rights in the three parcels.” Once a mortgagee has recorded its security interest, all third parties are deemed to be on notice.”

Adams' attorney argues the trial court correctly ruled that the title held by AgSouth was subject to prescriptive title claims. "It is uncontroverted that One Bird, by and through its predecessors in title, used and possessed the relevant properties upon which the cart paths, greens, fairways and tee boxes are located at least since August 1, 1992, by which date the golf course was completed," the attorney argues in briefs. "Such possession is enough to support a claim for prescriptive easement as no evidence was proffered by Smith that the possession was permissive in nature." In a release filed Aug. 31, 1992, AgSouth released its interest in all the property used by the golf course, referring to the property as "said golf course," and noting that "Grantor reserves unto himself and his immediate family the right to fish in the ponds located on said property as long as such actions are not detrimental to said golf course." "Ag South intended to release the entire golf course, not just a portion of it, and Ag South did not believe that it retained any interest in any portion of the golf course until it conducted a survey prior to beginning foreclosure proceedings," the attorney argues. By then, One Bird had operated the golf course for more than 20 years. Adams' attorney argues that although Smith saw plats of the relevant properties before he purchased them, Smith believed that two of the tracts were located in such a fashion "that it would block access to the golf course," and require Adams to purchase the tracts from Smith. "Smith is the son-in-law of the individual who owns the competing golf course in Vidalia, Georgia," the attorney contends. The trial court did not err in admitting the unrecorded plat and related documents and did not vary the terms of the related release. To the extent that the August 31 release was ambiguous, the trial court was entitled to rely on unrecorded documents in order to clear up the ambiguity. The trial court also did not err in finding that One Bird had no notice of the AgSouth security deed. "One Bird had no actual or constructive notice of any interest held by AgSouth after the filing of the August 31 release," the attorney argues. "To the contrary, a review of the deed records placed One Bird on notice that AgSouth's entire interest in the golf course had been released by the recordation of the August 31 release." "AgSouth released the entire golf course from its lien," the attorney concludes. "As a result, the property was not exempt from a claim for prescriptive title."

Attorney for Appellant (Smith): J. Michael Hall

Attorney for Appellee (One Bird): Howard Kaufold, Jr.

SMITH V. THE STATE (S16A0835)

In this **Fulton County** murder case, a woman is appealing her conviction and life prison sentence, arguing that during her trial, the judge excused a juror outside her presence in violation of her constitutional rights.

FACTS: The morning of Dec. 3, 2007, a man was at home at the Laurel Ridge apartment complex in Fulton County when he heard gun shots. He called 911, stating he had seen several people, including a black male with dreadlocks, getting into a black Mitsubishi truck and leaving the parking lot. An officer with the City of East Point Police Department responded to the scene where he discovered a body lying face down in a stairwell with gunshot wounds to his back. An autopsy showed the man had bled out internally after one of the bullets punctured his lung and another went through his heart. The victim was later identified as Brian Mosley, and police subsequently discovered his apartment door had been kicked open. A little more than a month later – on Jan. 15, 2008 – Detective Donna Williams with the East Point Police received an anonymous tip from a woman she later identified as Latonja Cojoe. Cojoe told the detective she

had information regarding Mosley's death and that a woman by the name of Shauna Smith had been involved. Two officers then interviewed Cojoe, who told them Smith had dated Mosley for a few months, then broken up with him, and that he had come to Smith's home in November 2007 and found her with another man. Mosley later texted Smith that he had "keyed" her lover's car – i.e. scratched it with a key. Smith paid \$850 to repair her friend's car, but she remained angry that Mosley had not reimbursed her. As a result, Cojoe said, Smith contacted another woman, Calenthia Honeycutt, and arranged to have Mosley "set up," which led to his death. Honeycutt had formerly been married to Smith's co-defendant, Gregory Williams. On the day of Mosley's death, phone records revealed that Smith and Williams had talked 25 times to each other. Investigators also found that the calls between the two that morning bounced off towers near Mosley's apartment around the time he was killed. Following Smith's arrest, she told one of the detectives she was worried about her family's safety. He responded that, "\$850 is not worth a person dying over." The detective later testified Smith replied to him that "she knew," and that "she was sorry." Following a jury trial in December 2010, Smith was found guilty of malice murder, felony murder, aggravated assault with a deadly weapon and possession of a firearm during the commission of a felony. She was sentenced to life plus 25 years in prison. Smith now appeals to the state Supreme Court. (Williams was also convicted and sentenced to life.)

ARGUMENTS: Attorneys for Smith make only one argument – that the trial court violated Smith's "fundamental right to be present at all critical stages of trial under the Georgia Constitution." The trial judge did this by holding a bench conference where Smith was not present during a discussion about whether a juror should be allowed to be excused even though jury deliberations had already begun. Following the bench conference, the judge dismissed juror Greg Campbell and assigned an alternate juror to take his place. Although Smith was in the courtroom, she was not part of the discussion before the judge. "A criminal defendant has the right to be present during all portions of his or her trial," the attorneys argue in briefs. Under the Georgia Constitution, "violation of the right to be present triggers reversal and remand for a new trial whenever the issue is properly raised on direct appeal." In this case, Smith "was not legally present nor was there a legal waiver of this right or any legal acquiescence to this excusal. Therefore, [Smith's] right to be present at critical stages of her trial was violated and her conviction must be reversed." Although she was in the courtroom, Smith was not "legally present," her attorneys argue. "To be present in a legal sense under Georgia law, a defendant in a criminal case must be able to 'see *and hear* those proceedings.'" The record is clear that the substance of the bench conference was not discussed with Smith, nor was she asked for her consent before the judge merely excused the juror and stated his reason. Unlike the basis for most bench conferences, this was "clearly not a procedural or a legal discussion," Smith's attorneys argue. "It was a discussion about the removal of a juror after deliberations had begun." Furthermore, in this case, there was no good cause to excuse the juror, who simply wished to go on a family vacation. "It is the right of a criminal defendant to have their trial concluded by the tribunal they selected that must be paramount," Smith's attorneys contend.

The District Attorney and state Attorney General's office, representing the State, argue that Smith's constitutional right to be present at all critical stages of her trial was not violated by the excusal of a juror. Smith is not entitled to a new trial "because she acquiesced in the limited trial proceeding that occurred outside of her hearing," the State argues in briefs. Campbell first asked to be excused during jury selection because his family was due to go out of town on

vacation. However, because the trial was due to conclude that particular Friday, and he was not due to leave for vacation until Saturday, the judge did not excuse him. By 6:00 Friday night, however, the jury still had not made its final judgment, although it was close. When the judge ordered the jury to resume deliberations Monday morning, Campbell renewed his request and the bench conference ensued. The judge instructed the jury foreperson, the alternate juror, and the remaining jurors to “restart your deliberations entirely” and include the new juror. “You don’t just pick up from where you are,” the judge instructed them. In a nearly identical 2012 case – *Zamora v. State* – lawyers also argued that the discussion of dismissing a juror during a bench conference, and the juror’s ultimate removal, violated his constitutional right to be present during all criminal stages of the criminal proceeding against him. However, the Georgia Supreme Court determined that the defendant appealing in that case acquiesced in the limited trial proceedings that occurred during his absence because neither he nor his attorney voiced any objection to the judge. In this case, even if Smith did not waive her right to be present during a critical stage of the trial, “the record nevertheless demonstrates that Appellant [i.e. Smith] acquiesced to her absence. Appellant was undeniably aware of the trial court’s excusal of juror Campbell since that excusal occurred on the record, but failed to voice any concern following the trial court’s remarks.” Finally, Smith “has not suggested any way in which her presence during the bench conference would have changed the outcome of her trial,” the State contends.

Attorneys for Appellant (Smith): Jonathon Majeske, Ash Joshi, Mark Issa

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Sheila Gallow, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.

KENNEBREW V. THE STATE (S16A0844)

In this **DeKalb** County case, a man is appealing his murder conviction and life prison sentence for his role in the stabbing death of a man who allegedly sold marijuana.

FACTS: Around noon on Oct. 18, 2010, Marvin Evans was at home at the Wellington Court Apartments near Decatur when he heard a commotion in the apartment below. From his second-floor balcony, he saw two men near a white Chevrolet sedan. When the men realized Evans had noticed them, they jumped into the car and began to leave. Evans knew the two men who lived in the apartment below him, so he tried calling them. He got no answer from Breyon Alexander, but he did reach Darious Oliver, whom Evans knew as “Dough Boy.” Oliver, who was away from the apartment, asked Evans to go downstairs and check on it. On Evans’ way downstairs, he passed a third man who was leaving the two men’s apartment. Inside, he found Alexander hogtied, semi-conscious and bleeding in the middle of the living room floor. His throat had been cut and he’d been beaten about his face and neck. Evans called 911 and Alexander was transported to Grady hospital where he later died. Items found stolen from the apartment included two flat-screen TVs, gaming machines, two laptop computers and guns and ammunition, including a 12-gauge shotgun, 12-gauge shotgun shells, a .40 caliber pistol and .40 caliber Smith & Wesson ammunition. The investigation found no evidence of forced entry. The lead investigator learned from the victim’s sister that co-defendant Mason Babbage, a friend of Alexander’s, drove a white Chevrolet Malibu. Because of their friendship, Babbage knew that Alexander kept guns, money and marijuana at the apartment. Further investigation led police to consider Phillip Warren Kennebrew and co-defendant Samuel Hall as additional suspects. DNA

from a cigarette butt collected from the loveseat later matched Kennebrew. Oliver testified at trial that neither Kennebrew nor Hall had ever been to their apartment before. An arrest warrant was issued for Kennebrew and he was located and taken into custody at his girlfriend's dorm room at Georgia Gwinnett College. After his girlfriend signed a consent form allowing the police to search her room, police seized two book bags belonging to Kennebrew, as well as his cell phone. Inside the bag were four live 12-gauge shotgun shells, .40 caliber Smith & Wesson ammunition, and a combat knife in a holster. Cell phone records showed that Kennebrew and Babbage talked seven times the day of the murder.

In a joint trial, the jury convicted Kennebrew, Babbage and Hall of murder, armed robbery and other crimes. Babbage and Hall were sentenced to life in prison with no chance of parole. In January 2015, this Court upheld their convictions and sentences. Kennebrew was sentenced to life in prison with the chance of parole plus 25 years. He now appeals to the state Supreme Court.

ARGUMENTS: Kennebrew's attorneys argue that he received "ineffective assistance of counsel" from his trial attorney in violation of his constitutional rights, based on two "unreasonable and highly prejudicial errors." First, the trial attorney failed to object to the introduction of evidence from an illegal search and seizure which yielded ammunition similar to that stolen from Alexander's apartment. His defense at trial was that he was merely present at the scene of the crime, but was not involved in planning or carrying out the crime. He was tied to the scene by DNA evidence, but the only evidence suggesting a connection to the crime itself was the ammunition recovered from his backpack. There was no warrant for the search, and while his girlfriend could give officers consent to search her room, "she could not give them consent to seize Mr. Kennebrew's bags, nor to open and search them," the attorneys argue. Furthermore, Kennebrew had already been arrested and removed when they found the bags so the search was not made "incident to arrest." "A search incident to arrest can only be made of 'the arrestee's person and the area within his immediate control,' meaning 'the area from within which he might gain possession of a weapon or destructible evidence,'" the attorneys argue, citing the U.S. Supreme Court's 2009 decision in *Arizona v. Gant*. The trial attorney also rendered ineffective assistance of counsel by failing to object to the State prosecutor's closing argument, in which he commented on Kennebrew's failure to contact police prior to his arrest. Kennebrew did not deny being present at the robbery, but said he was only there to try to sell a video game console to Alexander. During the closing, however, the prosecutor questioned why Kennebrew would fail to alert authorities if he had not been involved in the crime. Specifically, he said, "if he was there and he had nothing to do with it and he saw everything, then why in the good gracious name did he not go immediately out and call somebody, the police, the sheriff's office, someone?" "Georgia law is clear that it is improper for the State to comment on a defendant's silence." Here, "the State explicitly argued to the jury that Mr. Kennebrew's failure to come forward was evidence of his guilt," and that is "highly prejudicial and improper," his attorneys contend. "With such slight evidence against Mr. Kennebrew, the State's argument that his silence equals guilt, a comment that has explicitly been held to be far more prejudicial than probative, could not have gone un-heeded by the jury, and more likely than not influence the outcome of the trial."

The State prosecutors argue that Kennebrew's trial attorney was not ineffective for failing to file a motion to suppress the evidence found during a search of Kennebrew's backpacks. His attorney testified that he never filed such a motion because he believed that the search "was

incident to arrest.” He further testified that he had discussed the matter with Kennebrew and his decision not to file the motion was one of trial strategy. Under Georgia law (Georgia Code § 17-5-1), a “police officer may search both a person arrested and the area within that person’s ‘immediate presence’ for the purpose of protecting the officer from attack, preventing the person’s escape, or discovering fruits of the crime for which the person is arrested or items which might have been used in that crime.” In this case, the search was related to “discovering fruits of the crimes” for which Kennebrew was arrested. “Whether the defendant is removed from the site of the arrest before the search begins is irrelevant if the search incident to arrest is to discover fruits of the crime for which the defendant is arrested or items which might have been used in that crime.” The trial attorney also did not render ineffective assistance of counsel by failing to object during the State’s closing arguments. The trial judge correctly determined that the prosecutor’s statement was not an improper comment on Kennebrew’s pre-arrest silence. It is true that in Georgia, the State may not comment on either a defendant’s silence prior to arrest or the failure to come forward voluntarily. “However, evidence as to whether a defendant tried to evade capture is admissible as evidence of flight,” and “statements about flight are proper as circumstantial evidence of guilt,” the State contends, citing the Georgia Supreme Court’s 2012 decision in *Sanders v. State*. Also, the State did not make the comments until after the defense attorney raised the issue of flight and said Kennebrew did nothing wrong but was merely trying to get away from someone else’s crime as fast as possible. Therefore, his attorney “invited the legitimate response from the State regarding [Kennebrew’s] failure to come forward after the crime.” Finally, contrary to Kennebrew’s argument that the evidence against him was “scant” and “slight,” “the evidence presented at trial of his guilt was overwhelming,” the State argues.

Attorneys for Appellant (Kennebrew): Kevin Anderson, Tyler Conklin

Attorneys for Appellee (State): Charles Spahos, District Attorney Pro Tempore, Lalaine Briones, Asst. D.A. Pro Tem, Gary Bergman, Asst. D.A. Pro tem, Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

WILLIAMS V. THE STATE (S16A0965)

In this pre-trial appeal, a man who has been formally charged with felony murder for the death of an infant is appealing a **Bulloch County** judge’s refusal to throw out the charge.

FACTS: Allen Ray Williams has been indicted for the death of Collen Durden, an infant boy who died in 2013 while in Williams’ care. In a 5-count indictment, Williams stands charged with the following crimes: (1) felony murder, “predicated” – or based on – the crime of contributing to the deprivation of a minor; (2) contributing to the deprivation of a minor; (3) felony murder, based on cruelty to a child; (4) cruelty to children in the second degree; and (5) making a false statement. In October 2014, Williams’ attorney, filed a “general demurrer” to count 1, objecting to the charge and asking the court to throw it out. Williams filed objections to his other charges, but it is the demurrer involving the first count that is the subject of this appeal.

Count 1 of the indictment states that in September 2013, Williams “did commit the offense of murder when the accused caused the death of Collen Durden, a human being, irrespective of malice while in the commission of a felony, Contributing to the Deprivation of a Minor, by willfully failing to care for said child so that said child died from asphyxiation in violation of [Georgia Code § 16-12-1]....” The second count of the indictment accuses Williams of contributing to the deprivation of a minor “in that accused did fail to properly supervise said

child, said failure to act resulted in the death of said child....” Under state law (Georgia Code § 16-5-1), felony murder is defined as “when, in the commission of a felony, he or she causes the death of another human being irrespective of malice.” It is punishable under the law by death, imprisonment for life without parole, or imprisonment for life with the possibility of parole. Under another state statute (Georgia Code § 16-12-1), contributing to the deprivation of a minor is defined as when a person, “Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be adjudicated to be a dependent child....” If the offense results in “serious injury” or death, it is punishable by one to 10 years in prison for the first offense and three to a maximum of 20 years in prison for a subsequent offense. Williams objected to the felony murder charge because the punishment for contributing to deprivation of a minor (one to 10 years in prison) is significantly lower than the punishment for felony murder (at least life in prison). In 2015, however, the judge denied Williams’ objection to this charge, as well as the others. Williams now appeals to the state Supreme Court, which has agreed to review the issue prior to trial to determine whether the trial court erred in denying his demurrer to Count 1 of the indictment.

ARGUMENTS: Williams’ attorneys argue the trial court erred in refusing to throw out Williams’ Count 1 felony murder charge. “Permitting the offense of contributing to the deprivation of a minor to act as the predicate for a claim of felony murder is contrary to the basic rules for statutory construction,” the attorneys argue in briefs. “By its plain terms, § 16-12-1 contemplates instances in which acts of deprivation might result in death and provides a specific penalty scheme when that happens. These terms reflect the General Assembly’s intent that acts of deprivation resulting in death are to be prosecuted only under the provisions of § 16-12-1. Any contrary interpretation would be incompatible with the expressed will of the General Assembly as well as the general rules for statutory construction.” The crime of contributing to the deprivation of a minor “cannot form the basis for a separate felony murder claim” because the General Assembly intended for § 16-12-1 “to address instances in which acts of deprivation resulted in death.” “Importantly, § 16-12-1 was enacted by the General Assembly and subsequently amended in 2010 with the full knowledge of the law which existed at that time, including the existing felony murder doctrine.” Furthermore, the trial court’s decision is contrary to the rule regarding ambiguous criminal statutes, which are to be construed “strictly against the State and in favor of the accused.” Under the Georgia Supreme Court’s 2003 ruling in *Brown v State*, “Where any uncertainty develops as to which penal clause is applicable, the accused is entitled to have the lesser of the two penalties administered.” “The State is bound by the specific provisions contained in § 16-12-1,” Williams’ attorneys contend. “Acts of deprivation which result in a minor’s death then may only be prosecuted under these provisions and not separately as felony murder.”

The State, represented by both the District Attorney’s and Attorney General’s offices, argues the trial court properly rejected Williams’ demurrer. For one thing, the issue of what punishment applies should Williams be convicted of both felony murder and deprivation is not yet “ripe” for this Court’s consideration because Williams has not yet been convicted. In 1996, the Georgia legislature added a felony sentencing provision to § 16-12-1 for causing serious injury or death. In 2010, the legislature increased the maximum penalty from five to 10 years imprisonment. “In the almost 20 years since this felony sentencing provision was passed, apparently no case has directly addressed § 16-12-1 as a predicate felony for felony murder,” the

State points out. Georgia Code does not enumerate all the predicate felonies for felony murder but simply provides that a person commits felony murder when he causes the death of another. Williams' argument rests on his contention that the two statutes relevant to his case have contradicting penalties for the same act. However, "Contradicting penalties do not create an ambiguity requiring judicial construction of either of these statutes," the State argues. Under state law, "When the same conduct of an accused may establish the commission of more than one crime, the accused may be prosecuted for each crime." The felony murder statute "provides that a person commits the offense of felony murder when, in the commission of a felony, he or she causes the death of another human being," the State's attorneys argue. "The felony statute has an element that the deprivation statute does not, i.e., that the defendant cause the death of another. Therefore, the State contends, "there is no 'intent' of the General Assembly to punish an act of deprivation that resulted in a child's death only as the felony of contributing to the deprivation of a minor." Nothing in the language of the deprivation statute "suggests that it cannot be used as the predicate felony for the crime of felony murder." Georgia's appeals courts have addressed similar challenges to other predicate felonies. In the state Supreme Court's 1998 decision in *State v. Tiraboschi*, the accused had argued that the only homicide for which he could be indicted was vehicular homicide. But the high court disagreed, stating that "the fact remains that the acts alleged in the indictment fit the requirements of both felony murder and vehicular homicide."

Attorneys for Appellant (Williams): Robert Persse, Amy Ihrig, Office of the Public Defender

Attorneys for Appellee (State): Richard Mallard, District Attorney, Keith McIntyre, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.