Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Monday, September 12, 2016

10:00 A.M. Session

LORI AND GARY STEAGALD V. DAVID, CHERYL AND JOSHUA EASON (S16G0293)

In this **Henry County** case, a couple is appealing a judge's ruling that was in favor of neighbors who sued them over a dog bite.

FACTS: Lori and Gary Steagald were neighbors and good friends of David and Cheryl Eason. In 2011, Joshua Eason, the Easons' adult son, moved in with them because he and his wife were divorcing. Soon after, Joshua asked his parents if he could keep his pit bull dog, Rocks, at the house. He and his wife had rescued the dog six months earlier after finding him on the side of the road. Cheryl told her son he could keep Rocks at the house temporarily if he built a pen for the dog inside the fenced back yard. She wanted to ensure that the dog did not escape the yard, given that they did not know the dog's history and she did not trust the breed. Cheryl had only seen the dog two times before, when she had gone to the home of Joshua and his former wife. On both occasions, the dog acted happy to see her, and the Easons said they had never seen the dog act aggressively.

According to Gary Steagald, on the dog's first day at the Easons' house, Cheryl told him Rocks had "snapped" at her. That same day, when Gary went over to meet the dog, he said Rocks growled, barked and snapped at him when he approached the penned dog and extended

his fingers. Six days later, Lori Steagald went over to the Easons' house to borrow some tea bags. Joshua was in the fenced backyard, playing with Rocks, who was on a lead. Joshua walked to the gate, leading Rocks, and opened the latch so Lori could enter. When she extended her hand so that Rocks could smell her, the dog jumped up, latched onto her arm, and started biting down. Joshua screamed and started hitting the dog, but he could not get Rocks to release Lori. Joshua's father, David Eason, and a cousin came outside to help, and the men finally succeeded in getting the dog off Lori. As Lori attempted to flee the backyard, she slipped and fell, and the dog grabbed her right calf. The men got the dog off her leg, but she had to be taken by ambulance to the hospital. She required stitches, is permanently scarred and continues to suffer from neuropathy as a result.

The Steagalds sued the Easons, but the trial court ruled in favor of the Easons, granting them "summary judgment," which a judge does only after determining that a trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. The Steagalds then appealed to the intermediate Court of Appeals, arguing that Rocks' snapping at Cheryl Eason and Gary Steagald had put the Easons on notice that Rocks had the propensity to bite someone without provocation. But the Court of Appeals disagreed and upheld the trial court's ruling, finding that Rocks' prior behavior of snapping at Cheryl and Gary "was merely menacing behavior that 'alone is not sufficient to place its owner on notice of a propensity to bite.'" The Steagalds now appeal to the state Supreme Court, which has agreed to review the case to determine whether the Court of Appeals ruled correctly.

ARGUMENTS: The Steagalds' attorneys argue that the Court of Appeals erred in affirming the trial court's award of summary judgment to the Easons after finding that the evidence the Steagalds presented in court was insufficient to show that the Easons had notice that the dog had the propensity to attack Lori Steagald. "Here, the trial court unlawfully made the factual determination that the dog's 'barking, growling, and snapping at Gary Steagald…amounts to only aggressive or menacing behavior,'" the attorneys argue in briefs. "This determination by the trial court removed the jury from the fact finding process when it resolved, as a matter of law, that the evidence regarding Rocks' prior attempts to bite were merely menacing behavior." In this case, the dog attempted to bite two people on different occasions – Cheryl Eason and later Gary Steagald. The Court of Appeals' decision "goes beyond the summary judgment standard by eliminating the jury's role in determining liability in dog bite cases." "Whether a dog's prior actions rise to the level of nothing more than menacing behavior, or whether those actions are enough to have put the owner on notice of a vicious propensity are questions of fact, and therefore should be left for the jury alone to decide," the attorneys argue. There is a trend toward allowing the trial courts and the Georgia Court of Appeals to make factual determinations regarding what rises to the level of menacing behavior and what does not, despite the state Supreme Court's warning that in routine liability cases, summary judgment is granted "only when the evidence is plain, palpable, and undisputed." Even the Court of Appeals acknowledged in a 1962 case that, "Questions of negligence, of contributory negligence, of cause and proximate causes, and of whose negligence or of what negligence constitutes the proximate cause of an injury are, except in plain, palpable and indisputable cases, solely for the jury." The Steagalds' attorneys urge the state Supreme Court to make clear to lower courts that determinations about what rises to the level of menacing behavior "is a question of fact that must be determined by a jury in all but the most clear cases where no evidence of any menacing

behavior exists that would allow the reasonably prudent juror to find that the owner knew, or should have known, of the dog's propensity to attack humans. Clearly the facts here would allow a reasonably prudent juror to find the Easons knew of their dog's propensity for violence."

The Easons' attorney argues the trial court correctly granted summary judgment and the Court of Appeals correctly upheld it, and so should this court. Under Georgia's "first bite rule," a dog owner is liable for damages only if the owner had prior knowledge that the dog had the propensity to do the particular act (biting) which caused injury to the complaining party. Here, "There was no first bite to put the Easons on notice that Rocks would bite Ms. Steagald," the attorney argues in briefs. The only evidence the Steagalds rely upon is Gary's account of Rocks growling and snapping at him. (Cheryl denies that the dog snapped at her or at Gary.) Gary acknowledged that it is not unusual for a dog to feel uneasy the first day in a new place. And he acknowledged that it is not unusual for a dog to growl and bark at somebody he has never met. The night he said Rocks snapped at him, Gary went home and told his wife that the Easons now had a dog, but he did *not* tell her or his children that Rocks had snapped at him, nor did he warn them to stay away from the dog. Despite the Steagalds' attorneys' emphasis on "menacing behavior," a review of court cases shows that "menacing behavior" generally refers to normal dog behavior and what is expected from a dog, such as growling and barking. Barking and growling are not evidence that a dog has a "vicious propensity." Prior to the incident with Lori, Rocks had only displayed normal dog behavior. The issue is whether the dog's snapping at Gary would have placed the Easons on notice that the particular attack on Lori was likely to occur. But there was no evidence that Rocks had ever bitten anyone prior to Lori, and there was no evidence the Easons could have anticipated the dog's sudden, unprovoked attack of Lori, the attorney contends. "Rocks' behavior toward Gary, including barking, growling and even snapping, was normal, territorial behavior for a dog in an unfamiliar setting." Under the evidence, the Easons were unaware of the dog's vicious propensities, their attorney contends.

Attorneys for Appellants (Steagalds): Andrew Gebhardt, Marc Avidano, Grant McBride
Attorney for Appellees (Easons): James Scarbrough

LYMAN ET AL. V. CELLCHEM INTERNATIONAL, LLC. (S16G0662)

A married couple and two companies are appealing a ruling by the Georgia Court of Appeals that partially upholds a **Cobb County** jury's $7.4 million verdict against them and concludes that state law authorizes an award of punitive damages.

FACTS: Cellchem International, LLC. sells flame retardants for use in the rigid foam industry. Polyurethane rigid foams are primarily used in the insulation of houses and public buildings. One of those flame retardants is known as TCPP. Dale Lyman sold TCPP on behalf of Cellchem from 2003 until December 2009, although his relationship with Cellchem was not exclusive, and he also sold materials for another company. Lyman had a relationship with a Chinese company called Jiangsu Yoke Technology Company Limited, which is not a party to this litigation. Yoke created Shekoy Chemicals US, Inc. to sell TCPP in the United States. Lyman was an officer of Shekoy from its incorporation in May 2009, at which time he also worked as Cellchem's sales agent. Lyman introduced Yoke to Cellchem, and Yoke became one of Cellchem's TCPP suppliers. However, on Dec. 8, 2009, Shekoy, along with a company Lyman owned – Tritec International, Inc. – entered into a deal with Yoke to distribute TCPP in the United States. When Cellchem learned about the deal, it ended its business relationship with

Yoke. On Dec. 21, 2009, Lyman resigned from Cellchem. Helen Lyman, Dale Lyman's wife, also worked for Cellchem as its operations manager. She resigned Nov. 28, 2009, less than a month before her husband.

In 2010, Cellchem sued Dale and Helen Lyman, Tritec and Shekoy, alleging claims for computer trespass and computer theft, breach of fiduciary duty, and interference with business relations. Cellchem alleged that the Lymans and Yoke had worked with the others to create a competing business designed to destroy Cellchem. According to Cellchem, just prior to resigning, Mrs. Lyman ordered 33 ISO tanks of TCPP, although she had been ordered by one of Cellchem's two owners to order only nine tanks. At the May 2014 trial, she testified she had informed Cellchem that she had ordered the additional tanks but when confronted with a spreadsheet of TCPP orders, she acknowledged that those additional orders were not on the spreadsheet. Cellchem testified it was unable to store and pay for the rest of the TCPP orders, which hampered its ability to place future orders. Cellchem also claimed that after Mrs. Lyman resigned, Mr. Lyman returned her work laptop to the company. But her business e-mails, which the company needed, had been deleted. Cellchem presented evidence that its confidential QuickBooks files had been copied using a thumb drive and computers that the Lymans owned.

Following the trial, the jury returned a nearly $7.4 million verdict against the Lymans, Shekoy and Tritec, with the money apportioned as follows: $100,000 against the Lymans and Shekoy on the computer trespass claim; $100,000 against the Lymans and Shekoy on the computer theft claim; $900,000 against the Lymans and Tritec, for breach of fiduciary duty; $900,000 against the Lymans, Shekoy and Tritec for interference with business relations; $298,433.73 against all four to cover attorneys' fees for Cellchem; and $5.1 million against all four for punitive damages. The punitive damages were specifically apportioned among the four with 98 percent to be paid by Shekoy, 1 percent by Mr. Lyman, 0.5 percent by Mrs. Lyman, and 0.5 percent by Tritec. The Lymans and the others appealed to the Court of Appeals, arguing the trial court erred in (1) denying their motion for a verdict directed by the judge in their favor and their motion requesting a new trial on the issue of interference with business relations; (2) denying their motion for a new trial on the claims of computer theft and trespass; (3) admitting some Cellchem exhibits into evidence; (4) preventing them from using Cellchem's federal tax returns at trial; and (5) denying their motion for a new trial on the claim for punitive damages. (They did not appeal the verdicts on breach of fiduciary duty and attorney's fees.) In November 2015, the Court of Appeals issued its opinion, affirming the trial court's ruling on computer theft and computer trespass, but reversing the rulings on business interference, the issue of the federal tax returns and the admission of two of the exhibits. The Court of Appeals also remanded the case to the trial court for a new trial on punitive damages, as the verdict form did not apportion those damages based on each claim. In a later substitute opinion, the appellate court found that the findings of computer theft and computer trespass against Mr. Lyman and Shekoy "also may support a claim of punitive damages." The Lymans and the two companies now appeal to the Georgia Supreme Court, which has agreed to review the case to answer only one question: whether the Georgia Computer Systems Protection Act authorizes an award of punitive damages.

ARGUMENTS: Attorneys for the Lymans and two companies argue it does not, and the ruling should be reversed. The act allows one to sue in a civil action for damages for computer-related crimes. But in a civil action like this, the law defines the recoverable damages as "damages sustained and the costs of the suit," meaning the cost of hiring a lawyer. The phrase

"damages sustained" describes compensation – i.e. losses suffered or endured by a plaintiff," the attorneys argue. "And the Georgia legislature has made it clear that punitive damages are awarded '*not as compensation to the plaintiff* but solely to punish, penalize, or deter a defendant. State and federal appellate courts examining nearly identical language under a variety of statutes have held that the plain meaning of 'damages sustained' does not include punitive damages." The Computer Systems Protection Act makes no mention of punitive damages. "Punitive damages are penal in effect, and the act already has a penal component – criminal sanctions," the attorneys argue. The act "carries a maximum penalty of $50,000 after a showing of guilty beyond a reasonable doubt." But it "does not simultaneously afford private civil litigants the ability to recover millions of dollars in punitive damages under a lesser evidentiary burden." Therefore, the Georgia Supreme Court "should interpret the phrase 'damages sustained' in accordance with its ordinary meaning and hold that punitive damages are not recoverable under the Georgia Computer Systems Protection Act," the Lymans' attorneys argue.

Cellchem's attorneys argue the state Supreme Court should uphold the Court of Appeals ruling. The Lymans have "failed to thoroughly analyze Georgia law." The Computer Systems Protection Act states that anyone violated by this law may sue and "recover for *any* damages sustained." The legislature's "intent is clear – the General Assembly intended for 'any' type of damages, inclusive of punitive damages, to be recoverable by victims of computer crimes," such as Cellchem. Here, "the adjective is 'any,' which by its very definition indicates that there is no restriction on the types of damages available." The Georgia General Assembly "unambiguously disagrees with the notion that punitive damages may not be sustained," Cellchem's attorneys argue. Georgia Code § 16-9-130, which outlaws identity fraud, "expressly allows a plaintiff to 'recover general and ***punitive damages sustained***." "Therefore, to argue that 'damages sustained' was a clear indication by the General Assembly as to preclude punitive damages directly contradicts what the General Assembly itself has already done." The Georgia Supreme Court "should follow the plain reading of the statute and clear intent of the General Assembly and hold that punitive damages are recoverable for a violation of the Georgia Computer Systems Protection Act," Cellchem's attorneys argue.

Attorneys for Appellants (Lymans): Stephen Riddell, Patrick Schwedler
Attorneys for Appellee (Cellchem): Jonathan Crumly, Sr., J. William Fawcett

BELLO V. THE STATE (S16A1602)

A man facing trial in **Cobb County** on charges of sexually exploiting children is appealing a judge's denial of his pre-trial motions challenging as unconstitutional two Georgia statutes that he says prevent him from having access to the State's evidence against him.

FACTS: In October 2013, Yonatan Bello was indicted by a Cobb County grand jury for two counts of Sexual Exploitation of Children, with each count alleging that he knowingly possessed a video depicting a minor engaged in sexually explicit conduct. As part of the pre-trial "discovery" process – when both sides are required to share information about the case so they are fully prepared for trial – in December 2013, Bello's attorneys requested from the district attorney's office evidence in the State's possession, including all audio and video recordings, copies of all photographs, a forensic analysis report, miscellaneous CDs, and a mirror image copy of all computer hard drives seized. The State claims it complied with its requirements to turn over the materials it was authorized to give Bello but formally notified his attorneys that the

three CDs and two DVDs they requested "must be viewed in the D.A.'s office." In August 2014, the defense attorneys filed a number of motions to force the State to turn over the evidence, alleging that the State had not provided copies of all audio and video recordings. In the pre-trial motions, the attorneys also claimed that Georgia Code § 17-16-4 (a) (3) and Georgia Code § 16-12-100 (d) are unconstitutional because they violate Bello's right to due process and his right to effective assistance of counsel. At a hearing on Bello's motion to compel the State to give him the evidence required, the prosecutor argued Bello's attorneys could come inspect the child pornography evidence but that state law prevented them from walking away with copies of everything.

Under Georgia's discovery statute, § 17-16-4 (a) (3), before trial, a defendant or his attorney is permitted to "inspect and copy" all documents, photos, audio and visual tapes, and other evidence the prosecution intends to use at trial. However, in another subsection, if the defendant has been charged with sexual exploitation of children, as Bello has been, the child pornography evidence shall "be allowed to be inspected by the defendant but shall not be allowed to be copied." Meanwhile, the State's law on the crime of sexual exploitation of children and child pornography, § 16-12-100, states: "It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct." At the hearing on Bello's motion to compel, the State argued that the "child pornography statute does not give [the State] an exception to the criminal code for distributing it to defense attorneys." "Judge, essentially the State's position is that we are being asked to distribute child pornography," the prosecutor argued, comparing this to a drug case in which the State seized cocaine as evidence. "[Defense counsel] can come, they can inspect it, they can test it, but they can't walk out of the door with it." In June 2015, the trial court ruled in favor of the State, denying all of Bello's pre-trial motions and finding that the State had met its burden to make discovery available for inspection while there was no compelling reason for the child pornography materials to be copied and released as long as they were available for inspection. Bello now appeals to the Georgia Supreme Court.

ARGUMENTS: Bello's attorneys argue that these two statutes "require the government to violate Appellant's [i.e. Bello's] rights to due process and effective assistance of counsel." They violate his right to "due process" – which in a criminal trial is the right to a fair opportunity to defend oneself – by "denying meaningful access to evidence," Bello's attorneys argue in briefs. "Here, the State maintains that Appellant's due process rights are satisfied by simply allowing trial counsel to come **look** at the discovery at the district attorney's office." But Bello's ultimate conviction or acquittal is "dependent upon a forensic analysis of the evidence to determine whether and when the electronic files were viewed, or how and when the files were downloaded." The analogy to a drug case is inaccurate. "Unlike a piece of crack cocaine or marijuana bud, the electronic evidence from the computer can show the exact time that the image was saved on the computer," and "any D.A.'s office can make identical copies of electronic evidence by the simple use of a computer…" without losing possession of it. Bello's requests for a copy of discovery so that he can mount a defense is not a rarity. In fact, the Georgia Supreme Court has been cited as among the majority of states that have required the prosecution to reproduce materials for the defense in sexual exploitation cases such as this one," the attorneys argue. Both statutes also violate Bello's constitutional right to effective assistance of counsel "by

interfering with his ability to prepare for trial and mount a defense at trial," they contend. Trips to the district attorney's office must be coordinated with various parties and are impractical. Much of trial preparation for defense attorneys occurs at nights or during weekends. By only being permitted to "inspect" the evidence, attorneys cannot make notes without drawing the State's attention; they cannot tab or bookmark the evidence for reference at a later date; they must commit everything to memory. "Appellant's trial counsel is impossibly tasked with the duty of subjecting the prosecution's case to meaningful adversarial testing, while wearing a blindfold and both hands tied behind his back," the attorneys argue.

The Cobb County District Attorney's office, representing the State, argues the trial court properly denied Bello's pre-trial discovery motions. First, the Georgia Supreme Court "should not rule on Bello's constitutional contentions, because the trial court did not distinctly rule on these questions," and procedurally, an issue may not be dealt with for the first time on appeal. Nevertheless, Bello has failed to introduce any evidence that the two statutes he challenges are unconstitutional, the State contends. "Furthermore, discovery in a criminal case is not constitutionally guaranteed." The Georgia Constitution provides criminal defendants with the right to a copy of their formal charges and a list of the witnesses against them as well as any evidence the prosecution has that would be favorable to their case. That said, Bello cannot demonstrate "a denial of meaningful access to evidence" under § 17-16-4 (a) (3) (B), which allows inspection of the State's child pornography evidence but prohibits him from copying and possessing it. Under the statute, defendants still have the ability to subject child pornography evidence to a defense expert's testing. Georgia Code § 16-12-100 also does not deny Bello access to evidence and due process. Both Georgia statutes operate in a similar manner to their federal law counterpart, "which has repeatedly withstood constitutional attack," the State argues. The "federal statute forbids copying child pornography and requires that such evidence remain in the court or government's custody." The purpose of the federal statute "is to prevent the authorized redistribution of the child pornography gathered as evidence by law enforcement," the State argues. And the statutes do not interfere with Bello's ability to prepare and mount a defense for trial. "Simply put, Bello has made no showing that the State has denied him meaningful access to the child pornography materials, other than to contend that his access has not been enough," the State argues. "In contrast, the State has made the child pornography materials available to the defense and has offered to continue doing so as many times and as often as the defense requires."

Attorneys for Appellant (Bello): Carlos Rodriguez, H. Maddox Kilgore
Attorneys for Appellee (State): D. Victor Reynolds, District Attorney, Michael Carlson, Dep. Chief Asst. D.A., John Edwards, Asst. D.A.

2:00 P.M. Session

LACHONA, LLC V. ABERRA ET AL. (S16A1527)

The appeal in this complex **DeKalb County** case stems from a dispute over who is the rightful owner of property in Decatur, GA.

FACTS: In 2010, property located at 1022 S. McDonough Street in Decatur was sold at a "tax sale" due to the owner's failure to pay City of Decatur property taxes. Under state law, the

owner may get the property back if he or she pays the taxes due plus any interest within 12 months of the sale, after which the "right to redeem is foreclosed," as long as proper notice was given. Josephine Hose had originally owned the property, but after she and her son died, Haddis Aberra purchased seven-ninths interest in the property from the son's widow and daughter. At the 2010 tax sale, Lachona, LLC, which calls itself a "small organization in the business services industry" and has one employee, purchased the property for $40,000. Steven Levy is the managing member of Lachona, as well as of another company, Forum IRA, LLC. Forum is also described as a "small organization in the business services industry" that has "approximately 1 employee." Purportedly, one month after the tax sale, in September 2010, Forum paid Lachona to redeem the property, claiming it was entitled to do so because it was a creditor of Josephine Hose's granddaughter, although Aberra's attorneys claim there is no evidence of the payment. According to Lachona's briefs, after Forum paid Lachona for the property, Lachona gave Forum a "Quitclaim Deed of Redemption." However, "It was later discovered that Forum did not have the requisite legal interest to redeem the property. Therefore, Forum and Lachona agreed that the redemption was void and of no effect on the tax deed." According to briefs filed by Aberra's family (Aberra has since died), since 2010, Lachona and Forum have maintained separate lawsuits, each claiming they had interests in the S. McDonough Street property.

In January 2014, Lachona sent out notices, as required by state law, informing all interested parties that they had until March 3, 2014 to redeem the property. One of the parties who received notice was attorney John Robinson, who represents Aberra's family. He immediately wrote Lachona that he wished "to make a complete, unconditional tender of the amount legally due for redemption of this property. Please provide me with that amount so that we may deliver the payment in a timely manner." Robinson never received a response. Once the March 3 deadline passed, Lachona filed a "quiet title action" in DeKalb County Superior Court to "remove clouds on the title to the property" and make it clear that Lachona was the rightful owner. Aberra raised a counterclaim asserting that his right of redemption had not been foreclosed. In July 2014, Aberra paid $56,000 to be held by the court until the issue was resolved. In December 2015, the trial court ruled in Aberra's favor that his right of redemption had not been barred, and he had a right still to redeem the property. The court's order stated that, "Lachona refus[ed] to respond to the letter from Aberra's counsel." Lachona now appeals to the state Supreme Court.

ARGUMENTS: Lachona's attorney argues the trial court erred by granting to Aberra "summary judgment," which a judge does only after concluding that a trial is unnecessary because the facts of the case are not disputed and the law clearly falls on the side of one of the parties. Here, however, the facts were disputed. "The trial court erred in granting summary judgment to Aberra because it resolved disputed facts in favor of Aberra in determining that 'Lachona waived the requirement of tender by its conduct,'" the attorney argues in briefs. Robinson's "redemption letter" did not specify that he was writing on behalf of his client, Haddis Aberra. "Instead, the letter appears to indicate that Robinson himself may have intended to redeem the tax deed. Importantly, Robinson did not include a redemption check along with the Robinson letter." The attorney argues no further letters were sent to Lachona. "No one either redeemed the tax deed or tendered any money to redeem the tax deed prior to the barment deadline date of March 3, 2014." Furthermore, Lachona disputes that it ever received Robinson's letter. The trial court also erred by finding that Lachona did not hold any interest in the tax deed

when it sent out notices with the March 3 deadline because "the undisputed facts show that Lachona did hold a valid tax deed interest when it initiated the barment proceedings." "Aberra contended, and the trial court incorrectly agreed, that on Jan. 21, 2014, Lachona did not hold a tax deed interest in the property that it could bar," Lachona's attorney argues. "Instead the trial court erroneously held that such interest was held by Forum because of the Quitclaim Deed of Redemption it received from Lachona," which both Forum and Lachona later acknowledged was void and the money paid by Forum was refunded by Lachona. "A void deed conveys no interest in the property," the attorney argues. Also, Aberra never made "a valid tender, and such a requirement was not waived by Lachona," the attorney contends. "At best, the Robinson letter was a promise to pay in the future, which is not sufficient."

Robinson and Aberra's other attorneys argue that Lachona's and Forum's "overlapping, conflicting, and contradictory assertions have played out like a shell game to divest others (including Aberra) of their rightful ownership interests in the property." The trial court correctly granted Aberra summary judgment and properly found that Lachona's barment notices were premature and invalid. While Forum eventually filed a motion to dismiss its claim to the property, it did not do so until one month after Lachona sent out its barment notices. Therefore, Lachona had already relinquished its tax sale interest in the property when it sent the notices and "was not the proper party to bar redemption or bring this action." Contrary to Lachona's assertion that it never received a redemption letter, Lachona's lawyer admitted in court that Lachona had received Aberra's letter and such admissions "are binding on the party," Aberra's attorneys argue. The trial court also correctly determined that Lachona's barment letters were premature and invalid because "Lachona Aberra has had to "protect his legitimate ownership interest in the subject property against another wrongful action by Levy's companies, Lachona and Forum," his attorneys argue. "Aberra has been forced to defend his interest in the subject property against their unauthorized efforts since 2010." The trial court properly held that Aberra's tender letter was effective and by refusing to respond, Lachona waived the requirement of tender. Lachona "incorrectly asserts that 'tender' can only be defined as 'payment' and that Aberra's failure to actually pay money before the barment deadline bars his right of redemption." But under the law, and as defined in Black's Law Dictionary, "tender is an ***offer***," the attorneys contend. Lachona's "refusal to disclose the amounts necessary to calculate the redemption price prior to the stated barment deadline, despite the request for such information contained in Aberra's tender letter, should be deemed a waiver of the requirements of tender and payment." "Aberra respectfully requests that Lachona be required to accept Aberra's tender and his payment of the lawful redemption price."

Attorney for Appellant (Lachona): John Clark
Attorneys for Appellee (Aberra): John Robinson, Gregory Blazer, Scott Fields

HUFF V. THE STATE (S16A1619)

In this **DeKalb County** case, a man is appealing his murder conviction for his role in the mid-day shooting death of a man in the middle of a busy Atlanta intersection after a drug deal gone wrong.

FACTS: On Oct. 5, 2012, Shaheed Kaba Huff asked Daabrayon Starr, Eric Haygood, and Denorris Turner to help him move some furniture and boxes from a storage unit into a house. During one of the group's trips moving items back and forth, Turner – a drug dealer – received a

call from Graham Sisk who wanted to buy a large quantity of narcotic pills from him. Turner asked Huff, his supplier, for the pills and Huff agreed but said by doing so, it would be "his drug deal" because the pills were his. Turner, however, told Huff that Sisk would only deal with him. So at about 4 p.m., Huff, Starr, and Haygood drove to the Chevron gas station on Memorial Drive across from the Pizza Hut where the drug deal was to occur. Turner arrived separately in a black pickup truck, stopping first at the Chevron to get the pills from Huff, then crossing over to the Pizza Hut to wait for Sisk. Turner, who was essentially homeless but occasionally stayed with family in a nearby neighborhood, had a history of drug use and a criminal history. Turner had met Sisk six or seven months earlier and regularly met Sisk at the Pizza Hut to sell him drugs. Sisk was most interested in narcotics such as Percocet and oxycodone and that day believed he was getting oxycodone. When Sisk arrived in a white Mazda sedan, he pulled his vehicle alongside Turner's with his driver's window facing Turner's. Turner handed over a large quantity of pills packaged in plastic sandwich bags so Sisk could count them. Instead, Sisk snatched the pills and took off without paying for them. Turner pulled onto Memorial Drive in pursuit of Sisk, with Huff and the others immediately following. The two vehicles pursued Sisk at a high rate of speed down Memorial Drive, then up Moreland Avenue, not stopping at traffic lights. When Sisk stopped at a red light at the intersection of Ponce de Leon and Moreland avenues, Turner pulled up behind him in his black truck, got out, and ran to Sisk's car, pounding on the windows and pulling on the door handles. Huff swerved his car into oncoming traffic and got in front of Sisk, blocking him. According to State prosecutors, Huff told Starr to get his gun from the console between the two front seats and go retrieve his pills, threatening to kill Starr if he did not bring them back. Starr and Haygood then walked "briskly" to the Mazda, and while Turner was trying to pull the door handles off, Starr fired repeatedly at the closed window, hitting Sisk multiple times and killing him. Haygood and Starr then ran off in different directions, while Turner returned to his truck and he and Huff sped away from the scene.

Multiple witnesses called police and provided descriptions and a license plate number, which helped identify Huff and the other men. Atlanta Police Department officers who investigated the scene recovered nine shell casings and a bag of pills in the driver's side door, which turned out to be loratadine, an allergy medication. Huff, Turner, and Starr were all indicted, and Starr pleaded guilty to the less serious charge of voluntary manslaughter in exchange for testifying against the other two. Huff and Turner were tried separately, and in August 2013, the jury convicted Huff of murder, aggravated assault, and weapons charges, and he was sentenced to life plus 25 years in prison. Huff now appeals to the state Supreme Court.

ARGUMENTS: Huff's attorney argues the trial judge erred by not directing a verdict of acquittal on all charges against him. "The State's case was completely dependent on the testimony of Daabrayon Starr, as he was the only witness who gave any testimony linking Appellant [i.e. Huff] to the crimes charged," the attorney argues in briefs. Without Starr's testimony there was no evidence against Huff. While a single witness is generally sufficient to establish a fact, in felony cases where the witness is also an accomplice, it is not sufficient and without the testimony of a second witness, the accomplice's testimony must be corroborated by independent evidence, under state law. The trial judge also erred by failing to instruct the jury of this requirement under the law. As a third error, the judge was wrong to deny the motion for new trial after Starr, following the trial, recanted his testimony implicating Huff, the attorney argues. "It is not disputed that when a State's witness takes a deal in exchange for testimony, it can

negatively affect his credibility because he has an incentive to say what the State wants him to say." Starr "knew that by recanting he was facing a life sentence rather than the 20-year sentence he had been given, yet the trial judge found his recantation to have no credibility," the attorney argues. Finally, Huff received "ineffective assistance of counsel" from his trial attorney in violation of his constitutional rights, the attorney argues, citing several instances in which his attorney should have objected but did not.

The Attorney General and District Attorney, representing the State, argue the trial court properly denied the motion for a directed verdict of acquittal because in addition to Starr's testimony, eyewitnesses testified seeing his car pull into incoming traffic to block Sisk, among other things. Huff's conduct "before, during and after the crime" showed his shared criminal intent, and while he may not have been the actual perpetrator of some of the offenses, the evidence showed he was an accomplice, the State argues. The judge did not err in failing to instruct the jury that a single accomplice's testimony was insufficient to convict Huff because "there was sufficient independent, corroborating evidence to obviate the need for such a charge." The trial court also did not err in finding that Starr's post-trial recantation and testimony were not credible. Finally, trial counsel was effective, the State contends, detailing why in its briefs. According to the Attorney General's brief, the attorney who represented Huff at trial had handled more than 50 murder cases, met with Huff more than 20 times before trial, and visited the jail several times. The attorney also participated in discovery, interviewed witnesses and visited the crime scenes and other relevant locations before trial, and actively pursued a strategic defense at trial. For these reasons, the State argues that Huff's enumerations of error lack merit and should not stand on appeal.

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