



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

Please note: *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

Tuesday, January 24, 2017

10:00 A.M. Session

UNITED HEALTH SERVICES OF GEORGIA, INC. ET AL. V. NORTON ET AL. **(S16G1143)**

PruittHealth, Inc. is appealing a Georgia Court of Appeals decision allowing a man's wrongful death lawsuit on behalf of his deceased wife to proceed in court against one of its nursing homes, even though his wife had signed an arbitration agreement when she entered the home. Arbitration is a means for resolving civil disputes outside the courts.

FACTS: From April 2013 until her death in April 2014, Lola Norton lived at PruittHealth-Toccoa nursing home, which is owned and managed by United Health Services of Georgia, Inc. While in the facility, Lola allegedly suffered injuries and harm, including falls, fractures, weight loss, and ultimately death. Following her death, her husband, Bernard Norton through his son and power of attorney, Kim Norton, filed a lawsuit in **Stephens County** Superior Court, claiming several causes of action including wrongful death, and alleging that all of Lola's injuries and death were the result of the nursing home's inadequate care and inadequate staff. The lawsuit was against PruittHealth, United Health Services and seven other defendants who are affiliates or employees of PruittHealth. In response, the defendants filed a motion asking the court to dismiss the case, or in the alternative, to stay the proceedings and compel arbitration. The trial court granted their motion and compelled the entire case and all its claims to arbitration.

Norton and his family appealed, and the Court of Appeals partially reversed the trial court's ruling. While the Court of Appeals found that the estate claims were barred by the arbitration agreement, it reversed the trial court's order compelling arbitration of the wrongful death claim. The appellate court found there was no evidence that Lola's wrongful death beneficiaries had entered into an agreement of their own to arbitrate their separate, distinct claims. United Health Services, PruittHealth and the others now appeal to the Georgia Supreme Court, which has agreed to review the case to determine whether an arbitration agreement signed by a person during her lifetime, which binds her and her estate to arbitration in the event of a dispute, is enforceable against her beneficiaries in a wrongful death action.

ARGUMENTS: Attorneys for the nursing home and its owners argue that based on the Federal Arbitration Act and over a century of Georgia law, "the answer is a resounding 'yes.' And because the Act prohibits states from carving out arbitration agreements for less favorable treatment, any determination that arbitration agreements are unenforceable in this situation must mean that *all contracts* are unenforceable in this situation." The Federal Arbitration Act "reflects an *emphatic* federal policy in favor of arbitral dispute," the attorneys argue, citing a 2011 U.S. Supreme Court ruling. "The United States Supreme Court repeatedly has admonished state courts that arbitration agreements must stand on equal footing and be evaluated consistently with all other agreements." Through her power of attorney, Ms. Norton had entered into an arbitration agreement with the nursing home. Following her death, Mr. Norton disregarded that agreement and sued in court, including in his complaint a wrongful death claim. The trial court correctly compelled arbitration on all claims. Georgia appellate courts have recognized the power of a deceased person during her life to enter a settlement agreement that will be binding on future wrongful death beneficiaries, the attorneys argue, citing a number of Georgia Court of Appeals cases. "In this case, the Court of Appeals broke from this longstanding precedent and instead treated arbitration agreements differently than other contracts." The U.S. Supreme Court "requires that arbitration agreements be placed 'upon the same footing as other contracts.'" If this decision is allowed to stand, "injured parties – whether a motor vehicle accident victim, hospital patient, or nursing home resident – would become unable to settle claims for full value without obtaining consent from all potential wrongful death beneficiaries, an impossibility given the unknown, unknowable, and constantly shifting pool of potential claimants," the attorneys argue. More than 100 years ago, the Georgia Supreme Court ruled in *Southern Bell Telephone & Telegraph Co. v. Cassin* "that a settlement agreement entered into by a decedent during his life barred the spouse's wrongful death claim." Lola's consent to arbitration is sufficient to bind her beneficiaries to arbitrate their wrongful death claim, the attorneys argue. "Rather than fostering the judicial efficiency and contractually bargained-for advantages of arbitration, the Court of Appeals pushed aside numerous decisions from this Court and ignored similar decisions from federal courts, including the United States Supreme Court. If left in place, the Court of Appeals' decision will lead to burdensome, bifurcated proceedings in different forums with potentially inconsistent outcomes."

Attorneys for the Nortons argue the Court of Appeals correctly determined that wrongful death beneficiaries who are not parties to an arbitration agreement are not required to arbitrate their claims. "The Federal Arbitration act does not mandate enforcement of the arbitration agreement in this matter," they argue in briefs. "Here, Lola Norton's wrongful death beneficiaries were not parties to the arbitration agreement" she had signed during her lifetime,

and Lola “did not have the authority to send her wrongful death beneficiaries’ claims to arbitration.” Georgia law also does not require enforcement of the arbitration agreement against the wrongful death beneficiaries in this matter, the lawyers contend. United Health Services and the others incorrectly argue the Court of Appeals erred by treating arbitrations differently than other contracts. Under Georgia Code § 13-3-1, a valid contract contains three elements: subject matter of the contract, consideration, and mutual assent by *all* parties to all contract terms. “Lola Norton’s wrongful death beneficiaries were not parties to the arbitration contract at issue and, like any other contract related to the forum or any other procedural defense, there is simply no contract regarding their claims,” the attorneys contend. “Wrongful death claims are required to be brought by a different party than survival/estate claims, have separate damages, and a separate statute of limitations.” “Since wrongful death beneficiaries have their own separate and distinct claim, it is also logical that they should have a say in *where* and *how* their claim will be litigated,” the family’s attorneys argue. “Wrongful death beneficiaries cannot lose their right to choose their forum or whether to arbitrate their claims if they did not... sign a contract or agreement to arbitrate.” Finally, courts in other states have reached a similar conclusion as the Georgia Court of Appeals regarding wrongful death beneficiaries’ claims, the attorneys contend.

Attorneys for Appellants (United): Jason Bring, W. Jerad Rissler
Attorneys for Appellees (Nortons): James McHugh, Michael Fuller, Jr., A. Lance Reins, D. Bryant Chaffin

DLT LIST, LLC ET AL. V. M7VEN SUPPORTIVE HOUSING & DEVELOPMENT GROUP (S16G0646)

A company is appealing a Georgia Court of Appeals decision, arguing it should have received more than \$105,000 in excess funds resulting from a tax sale of two properties whose owner failed to pay ad valorem property taxes.

FACTS: In this complex property case, M7ven Supportive Housing & Development Group – a non-profit organization that sought to provide affordable housing to seniors and low and moderate income families – failed to pay taxes on two properties in Carroll County. As a result, the county’s tax commissioner, Vickie Bearden, sold the properties in a tax sale to satisfy the delinquent taxes owed by M7. At the sale, a company called DLT List purchased the properties for \$55,000 each. The tax sales of the two properties resulted in \$105,188.91 in excess funds. At issue in this case is who gets the money. In June 2014, Bearden mailed notices to all entities who had an interest in the properties, including M7ven, DLT List, and several other parties, and informed them she was holding excess funds from the tax sales. Only M7ven filed with Bearden a Certificate of Authorization to Receive Excess Tax Funds and demanded immediate payment of the excess funds. At the time, there were no outstanding mortgages, liens or judgments against the properties. Bearden, however, did not immediately distribute the excess funds. Two months later, a company called Design Acquisition, LLC, purchased a tax lien against M7 from Investor Services of Georgia for \$1,399.55. As a tax lien holder against M7, Design then “redeemed” the properties from DLT List in September 2014 for the “redemption” amounts of \$66,000 each. In property law, the “right of redemption” allows a debtor whose property has been foreclosed upon and sold, to redeem the property, or get it back, if within a year of the tax sale he/she can come up with the money to repay the amount of the debt. DLT List then issued Quit Claims of Redemption to M7 for both properties. With a quit claim deed,

the grantor named in the deed effectively relinquishes, or quits, all of his or her claim to the property.

In the fall of 2014, Design sued M7 and Bearden, claiming it was entitled to the excess funds based on its redemption of the Carroll County properties. M7 opposed Design's claim on the ground that when M7 made its claim on the funds, Design did not yet have a redemption lien. In 2015, the trial court issued an order in M7's favor, finding that Bearden should have issued the excess fund to M7ven within a reasonable time after the submission of its claim, as M7ven was the only claimant to respond or have an interest in or title to the properties at the time of Bearden's notification of the excess funds. On appeal, the Court of Appeals upheld the decision, finding that Bearden should have disbursed the funds to M7 because at the time of the tax sale, "M7 was the owner and there were no recorded liens on the property." Design now appeals to the state Supreme Court, which has agreed to review the case to determine whether the Court of Appeals erred in ruling that a redeeming creditor after a tax sale does not have a first priority claim on excess funds.

ARGUMENTS: Design's attorney argues the Court of Appeals and trial court erred. Georgia Code § 48-4-5 governs the payment of excess tax sale funds, stating they are to be paid out in order of the priority of interest in the real property that was sold for taxes. The trial court inaccurately interpreted § 48-4-5 to require the priority of interests to be decided on the date the first claim to the money is made, "even though nothing in the statute would suggest that is the time to measure the claims," the attorney argues in briefs. "Historically, courts have held that because the excess funds are paid out in order of priority claims on the property, and because a redeeming party has the super – or first priority – lien, then the super lien holder has the first claim to the excess funds." The first decision confirming this concept was issued by the Court of Appeals in 2006 in its decision, *Wester v. United Capital Financial of Atlanta, LLC*. "There the Court of Appeals affirmed what all tax deed practitioners knew, that a redeeming party first can claim the funds and foreclose the balance of its lien," the attorney argues. Four years later, in *United Capital Financial of Atlanta, LLC v. American Investor Associates, Inc.*, the Court of Appeals confirmed that redeeming creditors are entitled to a super lien. But with this decision, the Court of Appeals has incorrectly overruled *Wester* and the opinions that followed. Following *Wester*, a redeeming creditor knew that it could recover the majority of the redemption price from the excess funds. "Thousands of redemptions therefore occurred and the party who spent the money to save the property from the tax sale was the first to receive payment," the attorney argues. "The public policy favoring redemptions was advanced. Until the Court of Appeals decided otherwise." The new law announced by the Court of Appeals in this decision "disfavors redemptions and misinterprets the distribution statute." "The Court of Appeals erred by limiting claimants of excess tax sale funds to only interest holders at the time of the tax sale, instead of the prior law allowing any interest holders, regardless of the timing their interest arose, to claim the funds," the attorney argues. "This error will result in the disastrous consequence of denying valid claimants their legal ability to collect money rightfully owed to them, while simultaneously creating windfalls to those who should not otherwise receive the funds." "By limiting the application of § 48-4-5 to a time that does not appear in the statute, the Court of Appeals has removed the ability to claim excess funds, which is an essential incentive and benefit of redemption."

Attorneys for M7ven argue the Court of Appeals did not err but merely followed the Georgia Supreme Court's previous decision and correctly overturned its *Wester* and *United* decisions. "Allowing a creditor such as Design, who could have been fully satisfied by taking \$1,395.55, 1.33 percent of the excess funds, to instead redeem the property and take \$105,189.91, or all the excess funds, is unfair to the taxpayer who had a great deal of equity in the property," the attorneys argue in briefs. "The Court of Appeals was correct in seeking to end this practice by taking away this irregular incentive." In its 2003 decision in *National Tax Funding, L.P. v. Harpagon Co.*, the Georgia Supreme Court ruled that a redeeming creditor has a "first priority to repayment – a 'super-lien' for the redemption price – and may proceed to foreclose against the property based upon that lien." Under that decision, Design could redeem *or* seek the excess funds. But the Court of Appeals expanded that choice in the *Wester* and *United* cases, allowing the creditor to redeem *and* seek the excess funds, the attorneys argue. Seeing its effect, the Court of Appeals overturned those decisions and returned to its interpretation of the statutes back in line with *National Tax Funding*. Here, Design, as owner of the Fulton County tax lien, could have satisfied its debt by seeking the excess funds of \$105,188.91. The tax lien was only \$1,395.55. Design would have gotten its money back, and M7 would have received \$103,793.36, the remaining equity in the properties. "Why didn't Design make an immediate demand for the excess funds after purchasing the Fulton County tax lien? Because it sought to seize both the land and the excess funds," the attorneys argue. "The law under *Wester* and *United* allowed the redeeming creditor to have its cake and eat it too, effectively getting the land and enough cash back from the excess funds so that it has only paid a few thousand dollars for the 'super lien' on the property." The attorneys point out that Design and DLT List have the same registered agent and organizer, John C. Clark, who is representing them in this appeal. "Thus, it is highly likely that these companies are related entities that were working together to confiscate all of the equity in the taxpayer's property." "Unfortunately, the cases allowing the redeeming creditor to also take the excess funds has provided incentives that work to harm the taxpayer and any other legitimate creditor, such as the first mortgage holder." M7 was entitled to the excess funds resulting from the tax sale upon its written demand for them, and "Design, as a redeeming creditor, does not have a first priority claim on the excess funds," the attorneys argue.

Attorney for Appellant (Design): John C. Clark

Attorneys for Appellee (M7ven): Donald Cook, Jr., Mark Thompson

2:00 P.M. Session

DAVIS V. THE STATE (S17A0176)

A young man is appealing his murder conviction and sentence to life in prison for his role in a robbery and murder when he was 17 years old.

FACTS: On June 26, 2011, Angelo Larocca asked a friend where he could get some Xanax. The friend gave Larocca the phone number of Hunter Davis, 17. Later that day, Larocca and his girlfriend met Davis at the Columns apartments on Paxon Lane in **Gwinnett County** to purchase the Xanax pills from Davis. The next day, Davis received a text that Larocca wanted to buy more Xanax and they arranged again to meet at the Columns on June 28. According to State

prosecutors, in the interim, Davis contacted friends and indicated he intended to rob Larocca. On June 28, Larocca, his girlfriend and two of their friends drove to the Columns to purchase the pills. Larocca and his girlfriend rode in the backseat. When they arrived, Larocca, who had about \$120 with him, got out alone and walked behind an apartment building. A short time later, he called his girlfriend, who later said he sounded scared. He asked her and their friends to “put the money out of the window.” An individual who was not Davis then appeared at the driver-side window and asked for money. The group said they didn’t have any. The individual then walked away in the same direction Larocca had gone. Soon after, the car occupants heard two rapid gunshots. Shortly after, a security officer at the complex found Larocca’s motionless body lying in a pool of blood in the stairwell of the 1000 building. He called 911. Responding officers found no money on Larocca, but they recovered 9 millimeter ammunition and a cigarette butt near his body. The State’s theory was that Brandon Mosley, a known gang member in Gwinnett County, shot Larocca during an armed robbery and that Davis was an accomplice. Witnesses testified that Mosley had previously shown them a 9-millimeter handgun, and Davis later admitted the cigarette butt was his. Following the shooting, Mosley walked to a nearby carwash and told a friend he had shot someone over some pills. He borrowed his friend’s phone and got someone else to come pick him up. Mosley also told the driver he had shot someone. Mosley then directed the driver to a nearby neighborhood where they picked up Davis. When Davis got into the car, he asked Mosley why he had shot Larocca. That night, Davis told his girlfriend he had killed someone and had been with Mosley at the time. And according to Davis’ attorney, Davis also consumed a good bit of drugs and alcohol. After police contacted him on the phone, he was later picked up in a police car and taken to headquarters where he was interviewed by detectives.

Following a jury trial, in May 2013, Davis was convicted of murder, armed robbery, aggravated assault and possession of a firearm during commission of a felony. He was sentenced to life in prison plus five years. Davis now appeals to the state Supreme Court.

ARGUMENTS: Davis’ attorney for his appeal argues that nine errors were made during his trial, and his convictions should be reversed and his case retried. Among the errors, his trial attorney was incompetent and rendered “ineffective assistance of counsel” on several grounds in violation of Davis’ constitutional rights. At trial, she failed to challenge the admission into evidence of Davis’ two-hour videotaped statement that he made after police drove him to the department. At the time, Davis believed he was in custody and under arrest, his attorney contends. Additionally, “Davis was high and falling asleep when he made the statement.” His trial attorney had reviewed his statement before trial and knew that Davis had told law enforcement he had not been to sleep for 24 hours, had smoked marijuana and had taken some “sticks,” which is street slang for Xanax. She was aware he was only 17 years old, sleep deprived and under the influence of drugs. As seen in the video, the interrogating detectives even made several comments about Davis’ condition and at one point had him stand up and walk around to keep him awake. “Even if this Court finds that Davis was not in custody and that the advice and waiver of [his Miranda rights] was not required, this court ‘must nonetheless determine whether the inculpatory statements themselves were voluntary,’” his attorney for his appeal argues in briefs. In the expert opinion of a forensic psychiatrist, due to Davis’ sleep deprivation, ingestion of drugs and alcohol and adolescent age, which contributed to his cognitive impairment, Davis’ statements were not “freely and voluntarily” made. Among other errors, the trial court was wrong in refusing to grant a postponement of the trial so Davis could hire the attorney of his

choice. His request for a continuance was not due to his failure to “negligently...employ new counsel promptly.” Rather, he had been led to believe for some time that his case would be resolved through a negotiated plea bargain involving his testimony against Mosley in exchange for immunity. Davis was surprised at the last minute to learn his case was going to trial. His trial attorney was also wrong for failing to file a motion suppressing evidence from an illegal search and seizure of Davis’ cell phone without a search warrant, his attorney argues. And it was error for the trial court to allow in evidence of Mosley’s gang affiliation as a “documented gang member of ABT,” which unfairly imputed Mosley’s conduct to Davis.

The State, represented by the District Attorney’s office and the Attorney General’s office, argues that Davis received effective trial assistance and that he has failed to carry his burden in proving ineffective assistance under the U.S. Supreme Court’s 1984 decision in *Strickland v. Washington*. His trial attorney, Deborah Fluker, was appointed to represent Davis following his arrest. She had previously served 10 years as a prosecutor before becoming a defense attorney in 2008. Since then, she has handled at least one murder trial as a defense attorney. Fluker did not believe she had a basis to argue that Davis was in custody when he made his statement to police. At trial, she said to the judge that she believed “the interview was non-custodial,” and “I can’t legally contend that it was a custodial statement. He was actually allowed to leave the police station.” Furthermore, she had a “strategic” reason for not filing a motion to suppress Davis’ statement to police: namely, she did not wish her client to testify, making him subject to cross-examination. She also wanted his statement to go before the jury because it gave her an opportunity to “humanize” him. The trial court also correctly denied Davis’ eleventh-hour motion the morning trial was to begin to grant him a continuance so he could fire Fluker as his attorney and hire Bruce Harvey. “Georgia courts have been unwilling to find an abuse of discretion in denying a motion for continuance when a defendant has not acted with reasonable diligence and has failed to retain counsel of their choice,” the State argues in briefs. Finally, the trial court did not commit error in admitting Davis’ cell phone records and evidence of Mosley’s gang affiliation, the State contends.

Attorney for Appellant (Davis): Bruce Harvey

Attorneys for Appellee (State): Daniel Porter, District Attorney, Christopher Quinn, Asst. D.A., Mike Morrison, Asst. D.A., Samuel Olens, former Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

LYMAN V. THE STATE (S17A0209)

Inee Lyman is appealing his murder conviction in **Fulton County** for the shooting death of Christopher Lynn during an attempted armed robbery.

FACTS: According to State prosecutors, Lynn was killed Sept. 20, 2010 behind a block of apartments on Myrtle Drive in southwest Fulton County. He had been involved in a check-cashing scam to steal money from south Atlanta banks that was originally planned by Zykia Adams and another woman, Joycelyn Patrick, who was Lynn’s girlfriend. The scheme was simple: Adams would open an account in her name for \$100, then Lynn and Patrick would drive her around to various Bank of America branches where she would cash checks for an amount just below the \$100 balance in her account and hand the cash over to Lynn. On Sept. 20, 2010, Patrick and Lynn picked up Adams, who lived at the apartment complex on Myrtle Drive, thinking she was the only one coming. But Adams also brought her months-old baby and a

friend, Yolanda Napier, whom she had asked to go with her to watch her back and take care of her baby. She explained Napier she was going to “bust a check,” referring to the check-cashing scam. Patrick was driving, Lynn was in the front passenger seat, and Adams, Napier and the baby were in the backseat. Eventually that day, Adams was able to withdraw about \$570 – \$470 above her account balance before the bank realized the account was being overdrawn and closed it. Adams had been under the impression she would get more than \$100 for her role in the scam. And when Patrick and Lynn wound up giving her only \$100, she started cursing and yelling, saying she was going to “smash on somebody,” because she did not believe she had received her fair share. She then texted her friend “Moonk,” later identified as Inee Lyman, who was around 20 years old at the time. Adams later told an Atlanta Police detective she was angry at Patrick and Lynn and wanted Lyman to come help her get her money. She told him to “jump them” as they arrived back at the apartment complex. When the group arrived, Adams directed Patrick to drive to a vacant apartment in the back of the complex in a secluded area. Lyman came out from somewhere behind the car and went straight to the passenger door, where Lynn was sitting. Lyman grabbed Lynn by the collar, pointed a 9 millimeter pistol at Lynn’s stomach, and demanded the money. Lynn denied having any money and tried to get out of the car, then he and Lyman struggled over the gun. Lyman then shot Lynn twice and Lynn hit the car door before falling to the ground. Lyman shot Lynn several more times, killing him.

In December 2010, Lyman was jointly indicted with Adams and the two were charged with malice murder, felony murder, aggravated assault with intent to rob, criminal attempt to commit armed robbery, and possession of a firearm during the commission of a felony. Lyman was additionally charged with an extra count of felony murder, conspiracy to commit a crime, and possession of a firearm by a first offender probationer. Several weeks later, Adams identified Lyman as the individual she had called to come help her get her money and as the shooter. She later pleaded guilty to voluntary manslaughter and was sentenced to 20 years in prison.

Following a jury trial, in May 2013, Lyman was convicted of all counts and sentenced to life plus 15 years in prison. He now appeals to the state Supreme Court.

ARGUMENTS: Under this Court’s 2016 ruling in *Stanbury v. State*, the trial court plainly erred when it failed to instruct the jury before its deliberations that a single accomplice’s testimony (Adams’) must be corroborated by other evidence (Georgia Code § 24-14-8). In Georgia felony cases, where the only witness is an accomplice, the testimony of a single witness is not sufficient to establish a fact. And while independent corroborating evidence is *sufficient* to sustain an accomplice’s identification, that corroboration does not dispense with the need of a jury instruction about § 24-14-8. In this case, the judge instead instructed the jury that testimony by a single witness could prove a fact. That was error, Lyman’s attorney argues in briefs. This Court has held that “a trial court’s failure to give the instruction where the State relies in part on the testimony of a possible accomplice leaves open the possibility of a conviction in violation of § 24-14-8.” The State conceded that Adams was an accomplice to Lynn’s murder, the attorney points out, and the statute “unequivocally” required the corroboration of her testimony, yet the judge “did not ‘provide the jury with the proper guidelines for determining Lyman’s guilt or innocence’ and instead misled the jury by instructing ‘the testimony of a single witness, if believed, is generally sufficient to establish a fact.’” The error affected the verdict considering that the other evidence came from witnesses who were discredited. The error was exacerbated by the closing argument of the State prosecutor who told jurors that, “one witness is sufficient to

prove a case beyond a reasonable doubt, if you choose to believe that person.” Excluding Adams, the evidence against Lyman is not overwhelming because jury notes show that after a full day of deliberations, at least five jurors were not persuaded by statements made by Patrick and another witness, and they favored acquittal. Therefore, the trial court’s misleading instruction was not “harmless” and it demands a new trial, the attorney contends. The trial court also erred in denying Lyman’s motion requesting a new trial because Lyman received “ineffective assistance of counsel” from his trial attorney, in violation of his constitutional rights, and in part because the trial attorney failed to request a jury instruction on accomplice testimony corroboration as required by state law.

The State, represented by the District Attorney’s office and the Attorney General’s office, argues that Adams’ testimony was amply corroborated. There is considerable doubt that Adams’ testimony even needed to be corroborated “because she was not the sole witness who identified Inee Lyman as the shooter,” the State’s attorneys argue in briefs. Not only did Joycelyn Parker also identify Lyman as the shooter, but Lyman himself admitted to another witness that he had “done it.” “Because Adams was not the only witness to affirmatively establish [Lyman’s] participation in the commission of the crimes charged, such that her testimony was indeed independently corroborated, the trial court was not required to give the accomplice corroboration charge, and therefore did not commit plain error in omitting it,” the State argues. “Any error in failing to charge on accomplice corroboration is harmless under the circumstances.” The State does not dispute that the failure to charge on accomplice corroboration is an obvious error. But the State “does strongly resist the contention that the failure to charge on accomplice corroboration affected Inee Lyman’s substantial rights, because in this case that omission in all probability did not affect the outcome of Lyman’s trial.” Also, Lyman’s trial attorney provided effective assistance of counsel and Lyman failed to carry his burden of showing that his attorney’s failure to request a charge on accomplice corroboration likely would have resulted in a different verdict. “Due to the overwhelming evidence of Lyman’s guilt, there is no reasonable probability that the result at trial would have differed were the jury instructed on the need for an accomplice to be corroborated.”

Attorney for Appellant (Lyman): Matthew Winchester

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Marc Mallon, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Ashleigh Headrick, Asst. A.G.

IMRAN RASHEED V. MARYAM SARWAT (S17F0168)

In this **Gwinnett County** case, a man is appealing the Final Judgment and Decree of his divorce, arguing he never agreed to the terms of the Settlement Agreement.*

FACTS: Imran Rasheed and Maryam Sarwat were married in 1997 and after 16 years together, separated in 2013. They have three minor children. In March 2014, Maryam filed a Complaint for Divorce, seeking custody of the children, child support, a fair division of the couple’s marital property and debts, retention of her own personal property, and coverage for the legal fees in litigating the divorce. The couple entered into a Temporary Settlement Agreement in June 2014 in which he was to pay \$3500 a month in child support, she was to reside with the children in the house the couple used to share, and he was to take care of all the expenses associated with the marital residence. The couple participated in mediation in April 2015.

Immediately prior to the mediation, his attorney says he filed a Domestic Relations Financial Affidavit showing Imran's monthly income as \$6,183.54. According to this attorney, after several months, negotiations broke down and Maryam in October 2015 filed a Motion to Enforce Settlement. Imran's attorney claimed that in that Motion to Enforce Settlement Agreement, Maryam attached as "Exhibit G" what she called "the draft of the formal settlement agreement and parenting plan" between the parties. A child support worksheet was also attached, saying his monthly income was \$15,754 – more than twice what his affidavit said. According to her attorney, as part of the "partial final agreement," the parties had agreed to the custody arrangement of the children and to sell the marital residence. Days after the mediation, he agreed to pay \$5,000 in attorney's fees. His attorney asked her attorney to prepare the formal final settlement agreement and parenting plan. In April 2015, her attorney sent the court an email to report "the final settlement of all the outstanding issues in the case." In October 2015, Imran informed Maryam he was financially strapped, working as an Uber driver, and planned to prepare another final proposal for her consideration. He said he was only willing to pay \$1500 a month for 60 months. On Oct. 30, 2015, Maryam filed a Motion to Enforce Settlement Agreement. The trial judge declared there had been a meeting of the minds as to all issues of the case and in March 2016 granted the motion and entered the Final Judgment and Decree of divorce that outlined the final terms as agreed upon in the settlement agreement. He now appeals to the Georgia Supreme Court.*

ARGUMENTS: Imran's attorney argues the trial court erred in granting Maryam's Motion to Enforce Settlement Agreement based solely on the documents submitted by the parties, as opposed to holding a hearing where evidence was presented by both parties. The terms of the March 2016 order "are not supported by any evidence or the record," the attorney argues in briefs, and "there was never a complete agreement as to all the terms of the divorce." The trial court also erred in signing the March 2016 order, as prepared by Imran's attorney, because it did not adequately address: custody of the three children, child support and how it should be computed, how the marital property and debt should be divided, and how the couple's carpet business (assets and liabilities) should be allocated. Denying that a settlement was ever reached, Imran objects to the final decree, including both the Parenting Plan and Child Support Addendum. "As drafted, the order fails to resolve all of the issues of the divorce," his attorney argues.

Maryam's attorney argues that Imran "has blatantly misrepresented what occurred the day of the hearing for the Motion to Enforce the Settlement Agreement." The transcript of the hearing shows the judge asked his attorney if he would agree to have the judge make a decision based on the documents filed by the parties as opposed to having a trial. His attorney agreed, as long as the court made note of the fact that Imran's financial circumstances had changed. He agreed to the court making a ruling without a formal hearing "and now wants to go back and state that the trial court committed error in doing so," the attorney argues. Furthermore, the court did not err in finding that there was a complete settlement between the parties based on email communication between the attorneys and their authority to enter an agreement on behalf of their clients. Imran's argument that the agreement did not address the essential terms of a divorce is simply incorrect. "The parties reached a full and final settlement of all the essential terms that should be resolved in a divorce: custody, visitation, child support, alimony and division of marital property and debts," the attorney argues. The trial court correctly found that the change

in Imran's financial circumstances was not sufficient evidence to void the agreement. Maryam asks the Supreme Court to affirm the trial court's ruling.

Attorney for Appellant (Imran): Michael Clark

Attorney for Appellee (Maryam): Philip Pilgrim

* Under legislation passed in 2016, future divorce appeals will be handled by the lower appellate court, the Georgia Court of Appeals.