Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Monday, December 10, 2018

10:00 A.M. Session

MILLIKEN & COMPANY V. GEORGIA POWER COMPANY (S18G0876)
MILLIKEN & COMPANY V. GEORGIA POWER COMPANY (S18G1107)

A manufacturing plant is appealing a Georgia Court of Appeals ruling that stems from lawsuits filed following a 2013 crash of a small business jet that killed five people.

FACTS: In 1988, **Milliken & Company** decided to expand its manufacturing plant in Thomson, GA, adjacent to the Thomson-McDuffie Airport. Milliken contracted for increased electrical power from **Georgia Power Company**, which then erected a high-voltage transmission line on Milliken's property. Milliken gave Georgia Power an "easement" over its property in August 1989, which permitted Georgia Power to construct the transmission pole and related structures to provide electricity to the Milliken plant. The written easement – or "Agreement" – contained the following provision that is at issue in this case: "[Georgia Power]…shall hold [Milliken]…harmless from any damages to property or persons (including death), or both, which result from [Georgia Power's] construction, operation or maintenance of its facilities on said easement areas herein granted." In dispute is whether this provision held harmless – or indemnified – Milliken from what ultimately happened.

On Feb. 20, 2013 – about 23 years after construction of the transmission pole – a small business jet struck the Georgia Power transmission pole on Milliken's property and crashed after

the pilot aborted a landing and attempted another landing attempt. The five passengers were killed in the crash; the two pilots survived but were injured. The families of the passengers and pilots brought lawsuits in **Fulton County** State Court against a number of persons and entities, including Milliken and Georgia Power. They asserted claims for wrongful death and personal injury damages, based on allegations that the transmission pole was negligently placed and constructed too close to the end of the runway, that it was too high, and that it encroached on the airport easement, causing the plane to hit the pole and crash. Relying on the provision in the signed Agreement, Milliken filed cross-claims against Georgia Power in each lawsuit, claiming that Georgia Power was contractually liable to Milliken "for all sums that plaintiffs [i.e. the families of the dead and injured] may recover from Milliken." Georgia Power filed a motion asking the court to grant "summary judgment" in its favor. (A judge grants summary judgment upon determining that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of the party requesting it.) In making its motion, Georgia Power claimed: 1) that the hold-harmless language in the Agreement could not be construed as an agreement by Georgia Power to indemnify Milliken for third-party claims by the plaintiffs against Milliken; and 2) that even if the Agreement could be construed to require Georgia Power to indemnify (i.e. reimburse) Milliken for damages the plaintiffs might recover against Milliken, the provision would render the easement void as "against public policy," the legal principle that a person or entity should not be allowed to do anything that would tend to injure the public at large. The trial court ruled in favor of Georgia Power, and Milliken then appealed to the Court of Appeals, Georgia's intermediate appellate court. The Court of Appeals subsequently upheld the decision by the lower court, ruling that the hold-harmless provision in the Agreement was void as against public policy based on Georgia Code § 13-8-2 (b), which states that an agreement "purporting to indemnify or hold harmless the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee...is against public policy and is void and unenforceable…." Milliken now appeals to the state Supreme Court.

ARGUMENTS (S18G0876): Milliken's attorneys urge the high court to reverse the Court of Appeals decision, arguing that it "overrides the plain language of Georgia's anti-indemnity statute," Georgia Code § 13-8-2 (b). That statute prohibits only indemnity agreements "1) where the injury is caused by or resulting from the 'sole negligence' of the indemnitee," which in this case would be Milliken, and "2) that relate to the construction, alteration, repair, or maintenance of a building structure, appurtenance, or appliance." (An appurtenance is something that is attached to something else, such as a garden.) "Because neither of those conditions is satisfied here, the Court of Appeals erred in voiding the indemnity agreement between Milliken & Company and Georgia Power Company," the attorneys argue in briefs. In its opinion, the Court of Appeals incorrectly ruled that Milliken sought indemnification for its *own* negligence. Because the Agreement specifically limits indemnification to injuries resulting from the "construction, operation or maintenance" of the transmission line, and because Georgia Power was solely responsible for such activities, the Agreement "can never be read to indemnify Milliken for its own sole negligence," Milliken's attorneys argue. "Because every conceivable scenario of injury within the scope of the indemnity necessarily involves the negligence of Georgia Power Company, § 13-8-2 (b) cannot apply here." The decision is also flawed, the attorneys contend, "because the erection of a transmission line by a public utility is not relative

to the construction of a 'building structure' as that term is used in § 13-8-2 (b)." The indemnity agreement here is valid under the statute, the attorneys contend.

Georgia Power's attorneys argue that in 1973, Milliken granted the City of Thomson and McDuffie County an "Aviation Easement" on a portion of its property for the airport's use. That easement imposed a duty on Milliken to prevent the erection of any structure into the airspace easement area. Georgia Power is not a party to the 1973 Aviation Easement. The attorneys contend that the Court of Appeals ruled correctly. Under the 1989 Agreement it signed with Georgia Power, Milliken granted the easement required for the transmission pole. The plaintiffs' claims in their lawsuits are based on Milliken's *sole negligence* in allowing the transmission pole to be constructed within the area covered by the Aviation Easement. The Court of Appeals properly held that Milliken and Georgia Power entered into their Agreement in connection with the "construction, alteration, repair, or maintenance of a building structure" under the meaning of § 13-8-2 (b) because the Agreement related to Milliken's expansion of its existing plant. The Court of Appeals correctly determined that the Agreement's provision at issue here purports to make Georgia Power liable for damages recovered by plaintiffs against Milliken based solely on Milliken's negligence, and therefore it is void against public policy under § 13-8-2 (b).

(Most of Milliken's appeal in **(S18G1107)** is identical to its appeal in **(S18G0876)**, and Georgia Power's response is likewise nearly identical to its response in **(S18G0876)**.)
Attorneys for Appellant (Milliken): Stevan Miller, Lisa Richardson, Laurie Webb Daniel, Philip George
Attorneys for Appellee (Georgia Power): Hugh McNatt, M. Anne Kaufold-Wiggins, Brooke Gram, Tyler Bishop, Benjamin Brewton, David Dial, Thomas Strueber, Carol Michel

ADAMS V. THE STATE (S18G0699)

A man is appealing a lower court's ruling that admitted into trial his earlier agreement to plead guilty to DUI.

FACTS: Gregory Claude Adams was the driver in a one-vehicle crash in **Hall County** on July 2, 2016. A Georgia State Patrol trooper who arrived on the scene determined that Adams had attempted to avoid hitting another vehicle in front of him that had stopped to turn left. In doing so, Adams had left the road and gone down an embankment. Upon speaking to Adams, the trooper detected the odor of alcohol and noticed Adams's eyes were bloodshot. After Adams submitted to one field sobriety test but refused others, the trooper arrested him for DUI and traffic offenses and read him the implied consent notice, which states: "Georgia law requires you to submit to state-administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial." Adams also refused to take the state-administered blood test. The arresting trooper then initiated an administrative suspension of Adams's license but agreed to suspend the administrative proceeding and allow Adams to keep his license based on Adams's formal written "stipulation" that he would enter a guilty plea to the DUI charge. Adams, however, ultimately pleaded not guilty and went to trial. At his May 2017 trial, the State introduced the stipulation into evidence; Adams did not object. The State also presented evidence of Adams's prior arrest for DUI, in which he had declined to submit to the

state-administered blood test and ultimately pleaded guilty to reckless driving. Following trial, Adams was found guilty of DUI, following too closely, and failure to maintain lane. He was found not guilty on the no-proof-of-insurance charge. Adams appealed and the Georgia Court of Appeals upheld the ruling. Adams now appeals to the state Supreme Court.

ARGUMENTS: Adams's attorney argues the Court of Appeals erred in affirming the trial court's admission of the administrative license suspension agreement at his criminal trial. The intermediate appellate court also erred in determining that Adams had waived his right to argue on appeal that the value of the evidence of his prior DUI was outweighed by the unfair harm it did to his case. "Research uncovered no Georgia case law holding that the appellate court could not review the trial court's weighing of evidence" because the person appealing didn't present any such evidence in opening statements or closing arguments, the attorney argues.

The State, represented by the Hall County Solicitor General's office, argues the Court of Appeals did not err in affirming the trial court's ruling admitting the stipulation into evidence at trial. The Court of Appeals also did not err in determining that Adams had waived his claim that it was error to admit his prior arrest for DUI as well as the balancing test for that evidence under state law. This Court should uphold the Court of Appeals ruling, the State contends.

Attorney for Appellant (Adams): Samuel Sliger

Attorneys for Appellee (State): Stephanie Woodard, Solicitor General, Brian Heck, Asst. Sol. Gen.

DOZIER, COMMISSIONER V. WATSON (S19A0027)

The State is appealing a court ruling that a man who pleaded guilty to stabbing his father did not understand he would be ineligible for parole due to his criminal history, and therefore his plea was "involuntary" in violation of his constitutional rights.

FACTS: Had the case against **Jeffrey Scott Watson** gone to trial, the prosecutor in **Jackson County** intended to prove that on Feb. 21, 2016, Watson stabbed his father, Thomas Watson, seriously disfiguring him and rendering his hand useless. In November 2016, represented by a lawyer, Jeffrey Watson pleaded guilty to aggravated battery and aggravated assault. In exchange, the State agreed not to prosecute him for attempted murder. Following the plea and during the sentencing portion of the hearing, the State entered evidence showing that between 1998 and 2008, Watson had been convicted of four other felonies, including theft by taking, theft by receiving stolen property, and aggravated assault. Based on these prior convictions, the State asked that Watson be treated as a recidivist, i.e. a repeat offender, under Georgia Code § 17-10-7 (c) and not be eligible for parole for whatever sentence he received. The court subsequently sentenced Watson to 20 years in prison plus 10 on probation. Watson's defense attorney objected, stating that prosecutors had failed to provide him notice they would be seeking recidivist sentencing under the statute. According to the State, however, shortly after, the defense attorney discovered that prosecutors had in fact provided him with notice.

In November 2017, Watson's new attorney filed a petition for a "writ of habeas corpus," challenging Watson's convictions. Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated. They generally file the action against the prison warden, or in this case, the Commissioner of Corrections, **Gregory Dozier**. In June 2018, the habeas judge ruled in Watson's favor, finding that his attorney at his plea hearing was "ineffective when he failed to

adequately advise [Watson] that he would be sentenced as a recidivist until after his plea was already entered." The Attorney General's office, representing Dozier and the State, now appeals to the Georgia Supreme Court.

ARGUMENTS: The State argues the habeas court erred in its legal analysis, and its grant of habeas relief should be reversed. Under the U.S. Supreme Court's 1984 decision in *Strickland v. Washington,* there is a two-prong test for determining whether a defendant received "ineffective assistance of counsel," which is a violation of constitutional rights. Under *Strickland,* a defendant must show not only that his trial attorney provided deficient performance but also that had it not been for that unprofessional performance, there is a reasonable probability the outcome of the proceeding would have been different. "Specifically, the habeas court misapplied *Strickland* when it concluded that 'prejudice is apparent because Petitioner was deprived of constitutionally sufficient performance,' rather than examining whether but for counsel's deficient performance, Petitioner would have pleaded not guilty and would have insisted on going to trial," the State argues in briefs. The *Strickland* decision makes clear that the two prongs "are separate inquiries."

Watson's attorney points out that at his habeas court hearing, the attorney instructed Watson to tell the judge "would you have accepted and entered a plea of guilty if you were told that the confinement of the sentence would be without parole, meaning you would have to serve every day?" Watson responded: "No, sir." The attorney now argues that the trial court "accepted his plea without determining if the defendant was aware that the State was asking for recidivist treatment and that his plea was freely and voluntarily made…." "It is only after the plea and after the presentation of evidence at the sentencing phase that the State reveals for the first time in open court its desire for recidivist treatment." The defendant's plea of guilty should be overturned as unconstitutional, the attorney contends in briefs. The plea was entered and imposed on the defendant "without the defendant voluntarily and intelligently understanding the consequences of his plea and the failure of the judge to even explain or give precautionary instructions prior to acceptance of the plea that the sentence could be a 'no parole' sentence, the most drastic of all sentences, other than execution." Most importantly, "the habeas judge was smart enough to put on the record the failure of the attorney" by asking the attorney, "Did you talk about recidivism applying and the possibility of applying if he plead guilty?" The trial attorney answered, "No." The attorney contends that "one cannot punish Mr. Watson for not having a lawyer bring him what the law requires, a full knowledge of his sentence before it is ordered." The habeas court's order should be upheld, Watson's attorney urges.

Attorney for Appellant (Dozier/State): Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Obrien, Asst. A.G.

Attorney for Appellee (Watson): Troy Millikan

2:00 P.M. Session

<u>STEVE BISHOP V. MICHAEL GOINS ET AL.</u> (S18G0695)
<u>JODI BISHOP ET AL. V. KEITH POWELL ET AL.</u> (S18G0696)

A couple a court ruled was stalking their neighbors in **Jasper County** is appealing a Georgia Court of Appeals ruling supporting the award of thousands of dollars in legal costs the neighbors incurred when the couple appealed.

FACTS: In 2010, **Steve and Jodi Bishop** moved onto Cedar Creek Drive in Monticello, GA. For the next several years, they harassed two couples who lived on the same street – **Michael and Bernie Goins** and **Jana and Keith Powell**. In 2014, representing themselves, the Goinses and Powells sought and obtained one-year protective orders against the Bishops under the state's stalking laws (Georgia Code § 16-5-94) and family violence laws (Georgia Code § 19-3-4). The Bishops did not appeal the protective orders. In 2015, the trial court granted three-year extensions of the protective orders and this time, the Bishops appealed to the Court of Appeals, which upheld the orders. The neighbors, who hired the same attorney for their appeal who had helped them obtain the protective orders, then filed in the trial court motions to recover the legal costs and attorney's fees it cost them for the appeal. The trial court granted their motions, ordering the Bishops to pay the Goinses $4,907.06 and the Powells $4,873.90. The Bishops also appealed that decision to the Court of Appeals, which affirmed the decision, ruling that § 16-5-94 (d) (3) authorizes such awards in connection with appeals proceedings. The statute, which addresses protective orders in stalking cases, states: "The court may grant a protective order…to bring about a cessation of conduct constituting stalking. Orders or agreements may: (3) Award costs and attorney's fees to either party." The Bishops now appeal to the state Supreme Court, which has agreed to review the case to determine whether the intermediate appellate court correctly interpreted the statute as authorizing an award of legal costs and attorney's fees for appellate proceedings.

ARGUMENTS: The Bishops' attorney argues that § 16-5-94 (d) (3) "simply does not authorize the award of costs and attorney's fees incurred by any party on appeal of the granting of a Stalking Protective Order." The Court of Appeals even pointed out in its opinion that, "As a general rule, Georgia law does not provide for the award of attorney's fees even to a prevailing party unless authorized by statute or by contract." Georgia Code § 16-5-94 (d) aprovides that a stalking protective order may award costs and attorney's fees; it does not expressly provide that a separate order issued post-appeal may award costs and appellate attorney's fees," the attorney argues in briefs. Georgia's appellate courts have held that some attorney's fee statutes authorize an award of appellate attorney's fees and that other statutes do not. In passing this law, the General Assembly "did not say anything about the award of appellate costs and attorney's fees to either party," the attorney contends.

The attorney representing the Goinses and Powells argues that § 16-5-94 (d) authorizes the trial court to award legal costs and attorney's fees in its discretion. "Therefore, the Court of Appeals did not err in granting appellate attorney's fees to Petitioners." While the words alone in the statute "do not expressly speak as to whether appellate costs and attorney's fees may be awarded, it is clear that under the rules of statutory construction § 16-5-94 must be read to allow the trial court to award costs and attorney's fees in its discretion." "The General assembly's intent in this statute clearly gives the trial court the power to restrain and discourage the stalking conduct by awarding costs and attorney's fees if the trial court deems it necessary to do so," the attorney argues. "While an award of attorney's fees may not be necessary in every case, just as psychiatric care may not be necessary in every case, the trial court deemed it

appropriate to award attorney's fees in the case at hand and had the discretion to do so." The Supreme Court should affirm the Court of Appeals decision.
Attorney for Appellants (Bishops): William Turner
Attorney for Appellees (Goinses, Powells): Hays McQueen

BURGESS V. HALL, WARDEN (S19A0041)

A young man whose murder conviction was upheld by the Georgia Supreme Court in 2013, is appealing a ruling by another court rejecting his claims that his lawyer for his appeal was incompetent and violated his constitutional right to effective legal assistance.

FACTS: In its ruling, the state Supreme Court found that on Oct. 25, 2008, **Jerome Burgess**, then 19 years old, participated in a drive-by shooting in **Clayton County** by driving the vehicle from which Andre Weems used an AK-47 to shoot at three teenagers, one of whom –16-year-old Dana Varner – was fatally wounded. At trial, witnesses, including Weems, testified that Burgess and the others riding with him that night were members of the gang known as "Murk Mob." Witnesses testified that earlier that evening, members of Murk Mob and a rival gang, "220," were involved in an altercation in the parking lot of Tara Stadium following a high school football game. Witnesses testified that Weems had words with the leader of the 220 gang, and Weems testified that he and the others were "mad" at the leader. Police, who were monitoring the crowd following the game, noticed Burgess with his vehicle in the parking lot and instructed him to leave. After leaving, Burgess drove the group to Weems's cousin's house where Weems retrieved the gun. Burgess then drove Weems and the others to another neighborhood in Clayton County where the leader of 220 lived. However, when Burgess and the others did not find the rival gang member at his home, a witness stated the group decided to assault three nearby teenagers they assumed were 220 members so Weems could "get [his] stripes." The surviving victims testified that they saw a dark colored truck at the top of the hill flash its lights a few times, and that the truck then sped toward them as bullets were fired from the vehicle.

On the stand, Burgess denied being in a gang and testified that Weems forced him to drive the vehicle by nudging him with the gun. He initially stated he was unaware of Weems's intent, but he said he had flashed his headlights in warning because he knew Weems intended to shoot. The medical examiner testified that Varner died of a gunshot wound to his torso.

In June 2009, Weems and Burgess were indicted by a Clayton County grand jury for malice murder, felony murder, aggravated assault and possession of a firearm during commission of a crime. They were tried separately. Following Burgess's trial, where Weems testified for the State against him, Burgess was found guilty of felony murder, six counts of aggravated assault and the firearm possession. He was acquitted of the remaining counts and sentenced to life in prison with the possibility of parole.

In 2015, Burgess filed a petition for a "writ of habeas corpus." Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated. They generally file the action against the prison warden, who in this case was **Phil Hall**. In his petition, Burgess raised two grounds, both alleging he had received "ineffective assistance of counsel" from his appellate counsel. In ground 1, he alleged that his appellate counsel was ineffective for not raising the claim that his *trial* attorney had been ineffective for failing to cross-examine co-defendant Weems about his plea of incompetency and his conviction of guilty but intellectually disabled. In ground 2, he alleged that

his appellate counsel failed to allege that the state had violated discovery statutes by failing to provide psychological reports summarizing Weems's intellectual disabilities. In April 2017, the habeas court denied Burgess's petition for habeas relief, determining that both his claims lacked merit. Burgess now appeals to the state Supreme Court, which has agreed to review the case to answer two questions: Did the habeas court err in rejecting Burgess's claims of ineffective assistance of appellate counsel, and is coercion an available defense of felony murder under Georgia statutes?

ARGUMENTS: Attorneys for Burgess argue the state Supreme Court should reverse the habeas court's order denying his petition for a writ of habeas corpus. Burgess's appellate attorney was ineffective for failing to raise the issue that his due process rights under the U.S. and Georgia constitutions were violated when the State withheld "exculpatory evidence" (evidence tending to prove his innocence) in violation of the U.S. Supreme Court's 1963 decision in *Brady v. Maryland.* According to the State's expert witness, although Weems scored an IQ of only 55, on an earlier test he had an "almost average" IQ score of 86, and there was a 99.9 percent chance that Weems was "malingering" or lying about his intellectual disability. Following his conviction, Burgess had argued in his motion requesting a new trial that his trial attorney's failure to cross-examine Weems about his claims of incompetence and his final plea of guilty but intellectually disabled was damaging to his case. Were it not for his trial attorney's shortcomings, Burgess's trial would have had a different outcome because Weems was the only witness to testify about the gang's involvement and Burgess's culpability. The attorneys also argue that coercion is a defense to felony murder. Although Georgia Code § 16-3-26 establishes that coercion is a defense to crimes "except murder," coercion is plainly a defense to the felonies that underlie a felony murder conviction, Burgess's attorneys argue. Fifteen states have held that coercion is a defense to felony murder, while four have ruled it is not.

The State argues that the habeas court properly determined that Burgess failed to show that his appellate attorney's performance was deficient for failing to allege that the prosecutor had "withheld" information about Weems's psychological evaluation that was done in response to his plea of incompetence to stand trial. "That Weems filed a special plea of incompetency and had a jury trial thereon were matters of public record and, as shown by trial counsel's post-trial testimony, known or available to the defense," the State argues in briefs. Burgess argues for the first time in this appeal that the prosecutor "hid" information about the plea from the jury. But this was just a patent attempt "to divert the Court's attention from the fact that Petitioner was aware of and could have obtained the same information for use at his trial," the State argues. There was no violation of the *Brady* decision. Burgess's trial attorney extensively attacked Weems's credibility on a number of points, and the attorney later testified that he did not think Weems's guilty plea or competency would influence the jury. His trial attorney also elicited testimony from witnesses that Burgess was not part of the plan to shoot the three teenagers. Burgess's own testimony established he was guilty as a party to the crimes. He knew Weems was going to shoot the victims because he said he flashed his lights to warn them. He therefore has not shown that the result of the proceeding would have been different had his appellate attorney pursued the ineffectiveness claim against the trial attorney. As to the issue of coercion, in 1968, the General Assembly amended the defense of coercion to withdraw it for someone who committed murder. The Georgia Supreme Court has extended this principle to someone who is

guilty as a party to the crime. Here, it appears that the jury considered and rejected Burgess's claim that he was coerced.
Attorneys for Appellant (Burgess): Brenda Joy Bernstein, Leigh Ann Webster
Attorneys for Appellee (Hall, State): Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

DOZIER V. THE STATE (S19A0095)

A young man is appealing his murder conviction and life-without-parole prison sentence for his role in a robbery scheme that ended in the sexual assault and murder of a woman.

FACTS: For more than a decade, Gail Spencer worked as a secretary and office manager for the **Bibb County** law office of Calder Pinkston & Associates in Macon, GA. Tracy Jones also worked there as a secretary but had far less seniority than Spencer, who was authorized to make wire transfers from the firm's accounts while Jones was not. In 2012, Jones concocted a scheme in which her boyfriend, Michael Brett Kelly, his step-sister, Courtney Kelly, and she would hold Spencer hostage in her house while Jones went into the office and transferred funds from the law firm's escrow account in Spencer's stead. The plan was that once the transfer was complete, they would free Spencer and flee to Canada. On Oct. 4, 2012, Jones, Brett Kelly and Courtney Kelly drove to Atlanta to apply for expedited passports in anticipation of going to Canada. After returning, the group gathered at Jones's apartment to discuss the plan. Brett Kelly had recruited **Keith Anthony Dozier**, who was about 23 at the time, to help him "babysit" Spencer. Dozier and Kelly had previously worked together.

The morning of Oct. 5, 2012, Jones, Dozier, and Brett Kelly drove to Spencer's house on Stinsonville Road in Macon. Jones knocked on the door while Dozier and Kelly remained in their car, which was parked at the end of the cul-de-sac. When Spencer answered, Jones asked if she could use the bathroom, get something to drink, and use the phone. Spencer let Jones in and then went to her bedroom to get dressed for work. While in the bathroom, Jones texted Dozier and Kelly and told them to come into the house. The two men entered wearing ski masks and gloves and went into Spencer's bedroom.

Meanwhile Jones, posing as Spencer and using her phone, texted her boss and said she was sick and would not be in that day. Jones then closed the blinds and left, returning to her home to get ready for work and drop her son at school. Courtney Kelly then met Jones and, using her car, dropped Jones at work, then drove to Atlanta to pick up their passports. At the law office that morning, Jones transferred about $885,000 from Pinkston's escrow account, making three transfers into three different accounts held by Courtney Kelly. The plan was ultimately to divide the total among the four of them.

After Jones left Spencer's home, Dozier and Brett Kelly remained there to keep Spencer hostage until the money was safely transferred. But at some point, Kelly sexually assaulted and then suffocated Spencer with a plastic bag while Dozier stood watch. The two men then left in Spencer's silver Acura. The next day, Spencer's neighbors returned from a short out-of-town trip and became concerned about Spencer when they found their dog outside. Spencer had agreed to put him inside while they were gone. The neighbors called police, who found Spencer's body in the bedroom with a black plastic bag over her head. A medical examiner determined she had been smothered, strangled, and sexually assaulted.

Once Courtney Kelly received $885,000 in her accounts, she decided to flee on her own. Because it was a holiday weekend, Jones had to wait until the following Tuesday to make two more wire transfers for $245,000 and $163,000 so she, Dozier and Brett Kelly could get their share of the money. In sum, Jones's five transfers totaled nearly $1.5 million from the law firm. Dozier never did receive any money before the four were caught.

At trial, Dozier testified that Brett Kelly had assaulted and murdered Spencer on his own. He had not even known Kelly had a gun until he threatened Spencer with it in the house. Dozier himself was unarmed. Dozier did admit he was a willing participant in the burglary and false imprisonment, however.

In July 2013, Dozier, Michelle Jones, Brett Kelly, and Courtney Kelly were indicted for malice murder, felony murder, aggravated assault, burglary, false imprisonment, theft by taking, and aggravated sodomy. At a separate jury trial, Dozier was found guilty of all counts and sentenced to life without parole plus 20 years in prison. He now appeals to the Georgia Supreme Court.

ARGUMENTS: Dozier's attorney argues the trial court made four errors, including in sentencing Dozier to felony theft by taking. "The evidence was insufficient to sustain a verdict for felony theft because the State failed to prove that Dozier…had a fiduciary relationship with Calder Pinkston & Associates," the attorney argues in briefs. The trial court also erred by failing to exercise its discretion in sentencing Dozier to life without parole. The judge stated that "I believe the law mandates a life without parole sentence." But the law did not require the judge to sentence Dozier to life without parole as he did not have a history of having committed another "serious violent felony," which would have required the more restrictive life sentence. The trial court erred by responding to questions by the jury during deliberations by reinstructing them on the law of being a party to a crime without also instructing them about "mere presence, mere association, and knowledge." Finally, the trial court erred in denying Dozier's motion to suppress his statement to police as the statement was involuntary, Dozier's attorney contends.

The State, represented by the District Attorney's and Attorney General's offices, argues that all of Dozier's arguments are without merit. The "jury's verdict and the court's sentence entered on the basis of Jones being a fiduciary and [Dozier] being a party to the crime of theft by taking was not erroneous," the State argues in briefs. The trial court also did not err in sentencing Dozier to life without parole. Under Georgia Code § 16-5-1 (e), "the trial court has the discretion to sentence a defendant convicted of murder either to life with the possibility of parole or life without the possibility of parole," the State argues. "Here, the court exercised its discretion in sentencing [Dozier] to life without parole for malice murder." The trial court did not err in recharging the jury on parties to a crime without also recharging them on mere presence, mere association, and knowledge, the State contends. "Where the jury requests further instructions upon a particular phase of the case, the court in its discretion may recharge them in full, or only upon the point or points requested." Finally, the trial court did not err in admitting Dozier's statement to police, "as the statement was voluntarily made after [Dozier] was advised of and waived his *Miranda* rights."

Attorneys for Appellant (Dozier): Cara Clark

Attorneys for Appellee (State): K. David Cooke, Jr., District Attorney, Shelley Milton, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.