Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Abbreviated 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, February 5, 2019

10:00 A.M. Session

McKie v. The State (S18G1007)

In this criminal case from **DeKalb County**, the Supreme Court seeks to determine if the Court of Appeals erred in ruling that the evidence at trial was legally sufficient to prove that **Kiron McKie** was a convicted felon. McKie was indicted for malice murder and seven other crimes, including possession of a firearm by a convicted felon. The charges arose from a drug deal gone bad. Following trial, the judge entered directed verdicts of acquittal on two counts, and the jury acquitted McKie of five other counts, finding him guilty only of possession of a firearm by a convicted felon for which McKie was sentenced to five years in prison. On appeal, the Court of Appeals upheld the lower court's ruling. McKie now appeals to the State Supreme Court, arguing the evidence was insufficient to establish that he was a convicted felon.

Thomaston Acquisition, LLC v. Piedmont Construction Group, Inc., et al. (S19Q0249)

This certified question from the U.S. District Court from the Middle District of Georgia Macon Division asks the Georgia Supreme Court to answer two questions regarding Georgia law and the "acceptance doctrine." Georgia's acceptance doctrine states that "where the work of an independent contractor is completed, turned over to, and accepted by the owner, the contractor is

not liable to third persons for damages or injuries subsequently suffered by reason of the condition of the work, even though he was negligent in carrying out the contract, at least, if the defect is not hidden but readily observable on reasonable inspection." The case involves alleged construction defects of an apartment complex in Macon, **Bibb County**.

Elkins v. The State (S19A0331)

De'Marquise Elkins is appealing his murder conviction and sentence to life in prison with no chance of parole. According to state prosecutors, in March 2013, Elkins shot and killed 13-month-old Antonio Santiago while in his stroller in Brunswick, **Glynn County**, after his mother, Sherry West, refused to hand over her purse while Elkins tried to rob her. Elkins was 17 years old at the time of the crime and had turned 18 by the time he was sentenced to life without parole in September 2013. Among other arguments, Elkins argues on appeal that under the U.S. Supreme Court's 2012 decision in *Miller v. Alabama* and the Georgia Supreme Court's 2016 decision in *Veal v. State*, as a juvenile at the time of the crime, Elkins could not be sentenced to life without parole. In *Miller*, the U.S. Supreme Court ruled "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Veal* stated that based on the 2016 U.S. Supreme Court's decision in *Montgomery v. Louisiana*, a juvenile is not eligible for the harsh life-without-parole prison sentence unless he is among a narrow class of juvenile murderers found "irreparably corrupt" or "permanently incorrigible." Elkins's attorney argues that the trial court's finding that Elkins qualified for the harsh sentence "was utterly unsupported by any evidence outside of the facts of the charged offenses."

2:00 P.M. Session

Walker v. Sexual Offender Registration Review Board (S19A0291)

This case concerns a constitutional challenge to Georgia Code § 42-1-14, the sexual offender classification and monitoring statute. In 2005, **Clarence Walker** pleaded guilty to multiple offenses in **Chatham County** and was convicted of a variety of felony charges for kidnapping and raping two separate victims – one 11 years old and the other 18. Walker was released after 10 years in prison, at which time the state's **Sexual Offender Registration Review Board** classified him as a "sexually dangerous predator," requiring him to wear an electronic monitor. Walker challenged the classification in Fulton County Superior Court, but following a 2018 hearing, the trial court upheld Walker's classification and the constitutionality of the statute. Walker now appeals to the state Supreme Court, which has particular concern for, "Whether the trial court erred in rejecting Walker's claims that § 42-1-14 is unconstitutional."

Dibenardo v. The State (S19A0344)

In yet another case involving one's rights when charged with Driving Under the Influence (DUI), **Quincy John Dibenardo** was arrested in **Cherokee County** in February 2016 and charged with "DUI-Per Se" and "DUI-Less Safe." His attorney filed a motion to suppress the results of his breath test administered under the Implied Consent Law. The trial court denied the motion, and Dibenardo now appeals to the Georgia Supreme Court. His attorney argues the trial

court erred in denying his motion on the ground that no *Miranda*-style warning was given prior to the request that Dibenardo perform the breath test, an "incriminating act," the attorney argues in briefs. The Georgia Supreme Court ruled in 2017 in *Olevik v. State* that "submitting to a breath test implicates a person's right against compelled self-incrimination under the Georgia Constitution." "When police make a custodial request for a breath test, the DUI suspect must be read a *Miranda*-style warning in order to protect his or her Georgia constitutional right against compelled self-incrimination," Dibenardo's attorney argues. (*Miranda* rights include the right to remain silent, the right to an attorney, and the warning that anything the defendant says can and will be used against him in court.) In Georgia, "the right not to perform an incriminating act – such as a breath test – is entitled to the same protection as the right not to make an incriminating statement," Dibenardo's attorney argues. The Georgia Supreme Court in *Olevik* stopped short of determining what type of advice or warning must accompany a request for a breath test to adequately protect a defendant's constitutional right not to perform an incriminating act. The attorney argues the trial court also erred in denying Dibenardo's motion to suppress on the ground that Dibenardo was unconstitutionally coerced into blowing through the implied consent notice's illegal threat to use his refusal against him at trial. The state's implied consent notice informs a defendant that his refusal to take the breath test may be used against him at trial. "Due process dictates that a breath test coerced by such language is not admissible," the attorney argues. In response, the State argues the trial court properly denied the motion to suppress because Dibenardo voluntarily submitted to a breath test. Additionally, the State contends the statute is not unconstitutional because informing a suspect that his refusal to submit to required state testing "may" be used against him at trial is "neither coercive or misleading."

Williamson v. The State (S19A0276)

A young man is appealing his murder and armed robbery convictions in **Seminole County**. In 2007, a jury found **Stevie Dustin Williamson** guilty of shooting to death George Rutten, and he was sentenced to two consecutive life prison terms. Rutten, who lived in the Lake Seminole area, was an elderly man who had hired Williamson, then 18, to do odd jobs for him. Rutten eventually fired Williamson. Following the discovery of Rutten's body, Williamson initially told a Georgia Bureau of Investigation agent that the other young man who worked for Rutten had told Williamson he had killed Rutten. But following Williamson's arrest, and after he was read his *Miranda* rights, Williamson said that Rutten had attacked him, and during the fracas, Rutten's .22 rifle had gone off and killed Rutten. Williamson then directed officers to the area where he had disposed of Rutten's rifle and wallet. Prior to trial, Williamson's attorney filed a motion to suppress his statement when the case went before the jury. But the trial court denied his motion to suppress, and Williamson was subsequently found guilty of all the charges for which he had been indicted. In his appeal to the Supreme Court, Williamson's attorney argues the trial court erred in failing to grant his motion to suppress his statement. Williamson, who was 18 and had an 8th grade education, confessed only after several hours of interrogation. "The trial court should have excluded the statements Dustin made on Aug. 26, 2006 because the investigator induced a confession by implying the confession could not be used against Dustin," the attorney argues, making the statement involuntary. The State argues the trial court properly denied the motion to suppress and the evidence against Williamson is sufficient to convict him.