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Supreme Court of Georgia
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**Oral Argument Calendar Summaries
Tuesday, July 17, 2007**

10:00 A.M. SESSION:

S07G0454, Palmer v. State

The Supreme Court has agreed to hear a case from **Stephens** County regarding the legal question of whether a defendant can file a motion challenging his indictment after he has already entered a plea in his case.

In this case, a grand jury indicted Stacey Palmer Jan. 25, 2006 on 24 counts of sexual exploitation of children. At his arraignment Feb. 16, 2006, Palmer entered a plea of not guilty. On Monday, Feb. 27, Palmer's attorney filed a motion seeking to throw out the indictment.

The trial court dismissed the request as untimely. The Court of Appeals later affirmed the trial court's judgment.

The Supreme Court granted Palmer's petition to consider the following question: whether an objection to the form of the indictment filed within 10 days of arraignment can be properly dismissed as untimely.

Palmer contends his challenge was timely, despite the deadline that has been followed in this state for more than 100 years. He argues that in 2003, the Georgia General Assembly revised state law, providing that all pretrial motions could be filed after arraignment, as long as they were filed within 10 days. He contends he met the deadline because the 10th day, Feb. 26, fell on a Sunday.

The state argues that it is well established precedent that any objection to the form of an indictment must be raised before a defendant pleads to the indictment or he waives the right to do so. The state agrees with Palmer that it would be helpful for the Supreme Court to clarify the law in this area.

Attorneys for Appellant: Nina Maria Svoren; Timothy Paul Healy

Attorneys for Appellee: Michael H. Crawford, D.A.; Richard King Bridgeman, A.D.A.

S07A1220, Lindsey v. State

Lorenzo Dexter Lindsey was convicted of murder in **Richmond** County in the shooting death of Marcus Taylor. The victim had testified against Lindsey in an earlier murder case in which Lindsey was convicted for the death of an 83-year-old bystander, Rosa Barnes, killed during a drive-by shooting. The conviction was later reversed and Lindsey was acquitted of Barnes' murder in a retrial.

In the more recent trial involving Taylor's death, the state presented evidence that Lindsey began plotting Taylor's murder while he was still in jail awaiting the outcome of his trial in the Barnes case, and that he hired John Lawton to carry it out. Lawton has since been convicted in Taylor's murder and his conviction has been affirmed on appeal.

In this appeal, Lindsey contends the trial court was wrong to admit into evidence his record of misdemeanor arrests; that his lawyer failed to reveal that he had previously represented one of the primary witnesses against Lindsey; that the trial court should not have admitted into evidence details of Lindsey's prior murder acquittal because it tarnished his presumption of innocence; that the trial court violated Lindsey's rights by allowing the prosecutor from the previous murder trial to testify about statements Taylor had made to him before his death; and that the trial court should have declared a mistrial after a juror during deliberations claimed to know that Lawton was an assassin.

The state argues Lindsey's misdemeanor arrests were properly admitted to rebut the opening statement of Lindsey's attorney that he had no criminal record; that according to testimony, his lawyer had previously met once with the witness who testified against Lindsey, but that the meeting lasted an hour and involved the witness's arrest in an unrelated matter; that the evidence of the earlier murder charge against Lindsey was relevant because it demonstrated Lindsey's motive to kill Taylor; that Taylor's statements to the prosecutor who testified fell within the exception to the hearsay rule; and that Lindsey never moved for a mistrial.

Attorneys for Appellant: Mark Allen Yurachek; Bruce Steven Harvey

Attorneys for Appellee: Daniel J. Craig, D.A.; Madonna Marie Little, A.D.A.;
Thurbert E. Baker; A.G.

S07A1128, Wesley Education Foundation, Inc. v. State Election Board et al.

This appeal from **DeKalb** County involves longstanding allegations by the Charles H. Wesley Educational Foundation, Inc. that Georgia's voter registration rules violate the National Voter Registration Act of 1993.

In July 2004, a federal judge issued a preliminary injunction against Secretary of State Cathy Cox, requiring the State of Georgia to immediately start accepting mailed-in voter registration applications from private voter registration organizations as mandated under federal law. In July 2005, the parties signed a consent decree requiring the amendment of the rule that relates to the collection of voter registration applications by anyone other than voter registrars.

On Aug. 1, 2005, the foundation submitted its proposed changes to the State Elections Board. At a public meeting Sept. 14, the board met to discuss amendments to the rule. Although the board's staff had not yet brought to members' attention the foundation's proposal, the board did give a representative from the foundation time to orally present it. The board voted to amend the rule but not as the foundation proposed. The board did indicate it would still review the foundation's proposal.

Two months later, the foundation sued the State Elections Board and its members, including the Secretary of State, who chairs it. The foundation alleged the board had violated state and federal constitutional rights by failing to enact the foundation's proposed rules and had violated state law by failing to respond within 30 days.

On April 7, 2006, the elections board's attorney sent a letter to the foundation's attorney stating that the board had rejected the foundation's amendments to the rule by adopting its own changes. After the board filed a motion to dismiss, the trial court concluded the September hearing was sufficient to comply with the law, and if not, the April letter rendered the foundation's claims moot.

In its appeal, the foundation alleges that the trial court erred by considering matters outside the pleadings in ruling on a motion to dismiss and by failing to give the foundation a chance to oppose it; that the trial court was wrong to dismiss the complaint against the board because its allegations were sufficient to go forward. The elections board counters that it rendered a decision on the foundation's proposal by adopting its own proposal, thereby rejecting the foundation's; that although board members hadn't read the proposal, they were orally informed of it prior to their vote; that they complied with the 30 day law; that the foundation cannot keep litigating the same issue over and over; that as a result of the federal litigation and consent decree involving the same rule, the board has already enacted changes; and that ordering the board to adopt the foundation's proposed changes over others would be interfering with the board's discretion.

Attorney for Appellant: Bradley Erik Heard

Attorneys for Appellees: Julia B. Anderson, A.A.G.; Thurbert E. Baker, A.G.

S07A0912, Britt v. State

S07A1023, Georgia Public Defender Standards Council v. Sanders et al.

S07A1024, Ramseur v. State et al.

These three related appeals stem from a murder case in **Gwinnett** County, but the underlying issue is the cost of indigent defense in death penalty cases.

On Dec. 15, 2004, a Gwinnett County grand jury indicted Donald Steven Sanders, charging him with murder, felony murder, armed robbery, aggravated assault and possession of a knife during the commission of a felony. The Gwinnett County district attorney filed a notice to seek the death penalty. Under a contract with the Office of the Georgia Capital Defender, Walt Britt has represented Sanders as lead counsel. Douglas Ramseur, an employee of the Capital Defender, is also representing Sanders.

Concerned about the shortfall in funds for indigent death penalty cases and their ability to provide adequate representation, Britt subpoenaed budgetary records on 49 current capital cases from the Office of the Georgia Capital Defender and the Georgia Public Defender Standards Council.

The Council and other subpoenaed parties filed a motion to quash the subpoenas. On Feb. 13, 2007, the trial court denied the motion, ordering the Council to produce “any and all records and documents” relating to funds paid by the Capital Defender office or the Council to any attorneys representing indigent persons in death penalty cases from Jan. 1, 2005 through the present. The order allows the Council to edit out any attorney-client privileged information. The order also requires the Council to produce all relevant documents in the case of Brian Nichols, who faces a death penalty trial in the Fulton County courthouse shootings.

Upon hearing of the Gwinnett County ruling, Judge Hilton Fuller, the presiding judge in the Nichols case, issued a second order expressly forbidding the Council from producing the subpoenaed documents. The Council has filed a motion for reconsideration but the trial court has not yet ruled on that motion.

On Feb. 6, 2007, during a motions hearing in Sanders’ case, Britt and Ramseur were held in contempt. The trial court ordered them to proceed in representing Sanders after they argued they couldn’t continue on his behalf due to a conflict of interest. Not only was Ramseur an employee of the Capital Defender’s office, but that office had also reduced Britt’s hourly rate.

S07A1023

The Council argues that the appeal of the trial court’s order to produce the

documents should be dismissed; that the trial court was wrong to order the release of documents related to other death penalty cases, specifically Nichols' case, because they have no bearing on Sanders' guilt or innocence; that the release of documents showing the names and fees paid to experts in every indigent defense death penalty case since 2005 is privileged information and would violate the rights of defendants to a fair trial and effective representation; that the trial court's order violates a prior order entered in Nichols' case.

Sanders contends the appeal of the trial court's order to produce the documents must be dismissed.

S07A0912, S07A1024

In their appeals, Britt and Ramseur argue the trial court improperly held them in contempt because they were right to refuse to argue motions on Sanders' behalf due to a conflict of interest.

The state says the Supreme Court should affirm the criminal contempt convictions because they willfully disobeyed the court's order to proceed with the motion hearing.

Attorneys for Appellants: Christine Anne Koehler; Walter Michael Britt; Robert B. Remar; Thomas Joseph Mew IV; Brian Steel

Attorneys for Appellees: Daniel J. Porter, D.A.; Jeanette Fitzpatrick Shaw, A.D.A.; Richard Allen Vandever, A.D.A.; Thomas John Ludlam, A.D.A.; Gary Parker; Robert L. McGlasson; Henderson Hill

2:00 P.M. SESSION:

S07G0412, Hood v. State

In 2003, Edward Hood was convicted in **Walton** County of armed robbery, kidnaping and obstruction of an officer. In response to his appeal, the Court of Appeals concluded it could not consider Hood's allegations that he was represented by ineffective counsel because he did not raise the issue soon enough.

The Supreme Court has granted Hood's petition to consider the following question: Did the Court of Appeals correctly rule that the defendant's claims of ineffective counsel were not raised at the earliest possible opportunity?

Hood was convicted Aug. 6, 2003. A week later his attorney filed a motion for a new trial. In September 2003, his attorney informed the court Hood wanted a new lawyer. On Nov. 14, 2003, Hood wrote a letter to the court asking for an extension of time because he did not have an attorney. In that letter, he raised the

issue of ineffective counsel.

The following March, Hood, representing himself, sent a notice of appeal and motion for a new trial to the trial court clerk's office. The clerk filed the notice of appeal but returned the motion for new trial because Hood had failed to sign it. Seven days after the notice of appeal was filed, the motion for a new trial was filed. Hood eventually got a new attorney, who amended the motion for new trial, and it was denied by the trial court.

Hood argues that he did make it clear at the earliest possible time that he wished to raise the issue of ineffective counsel; that it is "unfair and intellectually dishonest" to b own and the court clerk arbitrarily returned the motion for new trial to Hood rather than filing it; and that he should not have been forced to proceed while representing himself.

The state contends that the allegation of ineffective counsel must be raised in the trial court before an appeal is filed if the opportunity exists to do so. The state says Hood did have the opportunity to raise the claim at the trial court level had he first filed a motion for new trial. Instead he first filed a notice of appeal. By choosing that route, he failed to raise the claim at the earliest possible time and thereby waived it.

Attorney for Appellant: Brian Steel

Attorneys for Appellee: William Kendall Wynne, Jr., D.A.; W. Cliff Howard, A.D.A. ar him from raising the issue when he was between attorneys, acting on his

S07A0824, Jackson v. State

Shelton Jackson was convicted in **Fulton** County of the malice murder of Grant Reynolds, who died from two gunshot wounds. He was also convicted of aggravated assault against cousins Larentae Mumphrey and Roger Mumphrey.

Evidence at trial showed that on May 17, 2001, Reynolds and the Mumphreys went to meet with Jackson's co-defendant, Jarvis Matthews, so that Reynolds could possibly purchase a set of tire rims. The Mumphreys testified that when Jackson arrived with the tire rims, he screamed at Reynolds, "where's the money," and began shooting. Larentae, who was ot in the thigh, said about 10 shots were fired. Police found eight shell casings at the scene, all fired from the same gun.

At trial, Jackson testified that Reynolds pulled the gun on him, they fought and the gun went off before Jackson got possession of it. He said he fell and the gun fired twice, but he did not try to kill anyone. "I was just fighting for my life...I was scared." On cross examination, Jackson admitted he'd shot Reynolds but not intentionally. Later, however, he testified that he shot Reynolds twice in self-

defense.

Jackson was convicted of malice murder, felony murder, aggravated assault and possession of a firearm during the commission of a crime. He was sentenced to life in prison. He obtained a new attorney for the appeal.

Jackson contends that his trial attorney was ineffective because he failed to object to the prosecutor's comments that Jackson never came forward with evidence of self-defense before his trial in 2003. He argues the prosecutor improperly remarked in closing, "it is very strange that somebody would all of a sudden two years later take the stand and say they were acting in self-defense when they had ample opportunity to tell the police...or to call anybody and let them know what happened." Jackson says his attorney also should have objected to the prosecutor's opening remarks that Jackson would present an alibi defense, when the prosecutor knew that was not so; that he should have objected when the prosecutor in closing described Reynolds -as a 32-year-old man survived by his parents, siblings and children, which Jackson asserts improperly asked the jurors to place themselves in the victim's place; and that he failed to request in writing that his murder charge be downgraded to voluntary manslaughter.

The state contends that even if the prosecutor improperly commented on Jackson's silence about self-defense, evidence of his guilt is overwhelming; that the physical evidence refutes his claim of self-defense; that the prosecutor merely reminded jurors in closing that the victim had a family and the killing was unjustified; and that the trial court did consider the defendant's oral request that his charge be changed to voluntary manslaughter and denied it because the evidence did not support it.

Attorney for Appellant: Brian Steel

Attorneys for Appellee: Peggy Ann Katz, A.D.A.; Paul L. Howard, Jr., D.A.; Bettianne C. Hart; A.D.A.; Thurbert E. Baker, A.G.; Benjamin Henry Pierman, A.A.G.

S07A0925, Bryant v. State

Michael Wayne Bryant was convicted in **Richmond** County of malice murder, arson, and burglary in connection with the death of Edith Ann Haynes and the burning of her trailer.

The evidence at trial showed that Bryant and Haynes were co-workers and that Bryant had entered into an agreement to purchase Haynes' home and to make repairs to a trailer into which she was moving. On the morning of Nov. 15, 2000, Bryant was seen arriving at Haynes' trailer and was seen leaving in an agitated state. Later that night a deputy responding to a 911 hang up call saw Haynes' trailer on

fire. Haynes' body was found inside the trailer and her death was determined to be a result of strangulation. A fire analysis expert testified the fire was caused by arson. Haynes had told others that while Bryant was repairing her trailer, she was hit by falling boards and believed that Bryant intended for the boards to hit her. The evidence also showed that Bryant had financial difficulties and had received an ultimatum from Haynes that if she did not receive payment soon, she would find another buyer; Bryant had received training in fire ignition and arson awareness; police discovered stickers of pentagrams and the word "NATAS" in Bryant's home, as well as letters between Bryant and a criminal defense attorney; and Bryant's previous home had been destroyed by fire under suspicious circumstances.

Bryant's defense was that he was with his wife at the time of the murder and fire.

In this appeal, Bryant contends the evidence is insufficient; the trial court erred in allowing admission of Bryant's prior house fire as a similar transaction; the trial court erred by allowing introduction of character evidence in violation of the attorney-client privilege; the trial court improperly admitted character evidence of satanic rituals; the trial court improperly admitted hearsay evidence; the trial court improperly allowed the State to perform a demonstration showing a delayed ignition; and trial counsel was ineffective.

Attorney for Appellant: Kirk Emerson Gilliard

Attorneys for Appellee: Madonna Marie Little, A.D.A.; Daniel J. Craig, D.A.; Mary A. Kimmey, A.A.G.; Thurbert E. Baker, A.G.

Attorney for Appellant: Kirk Emerson Gilliard

Attorneys for Appellee: Madonna Marie Little, A.D.A.; Daniel J. Craig, D.A.; Thurbert E. Baker, A.G.; Mary N. Kimmey, A.A.G.

S07F1201, Wilson v. Wilson

At issue in this **Coweta** County divorce case is whether the trial court erred in refusing to set aside a marital settlement agreement both parties signed outside the presence of their attorneys.

On April 14, 2006, Twyla Wilson filed for divorce from Jonathan Wilson. At the time, the Coweta Judicial Circuit required the parties in all contested divorce cases to participate in mediation. On Dec. 22, 2006, the parties met with a mediator after agreeing to do so without their attorneys, who were not available. In the agreement, the parties acknowledged that they "had adequate time to consult with their respective attorneys" before signing the agreement. As a result of the

mediation, the parties signed a settlement agreement.

But on Dec. 27, 2006, after consulting with his attorney, Jonathan objected to the settlement. She filed a motion to enforce it, arguing that Jonathan's attorney had proposed the parties "submit to a private mediation" and that he confirmed the arrangements in a letter. Jonathan filed a response to her motion, saying they had engaged in "court-referred" mediation, not private, and they were therefore protected by the Coweta Mediation Center's rules which granted Jonathan several days to object to the agreement.

The trial court ruled that the mediation was private, not court-referred, and therefore was not subject to the center's rules. On Feb. 23, 2007, the trial court entered a final judgment of divorce that incorporated the mediated agreement. The Supreme Court agreed to hear the appeal under its Domestic Relations Pilot Project.

In his appeal, Jonathan contends the trial court erred in finding that the parties engaged in private mediation and enforced an agreement signed outside the presence of their attorneys. He argues the court also erred in enforcing a settlement that does not comply with child support law; that he suffers from a mental disorder that makes it difficult for him to hold a job.

Twyla responds that they engaged voluntarily in private mediation and the Coweta Mediation Center's rules did not apply, although if they did, Jonathan failed to object within the required three days. She contends the child support order was appropriate.

Attorney for Appellant: Delia T. Crouch

Attorney for Appellee: Gus L. Wood III