

Supreme Court, U.S.
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No. 20-1819

In The
Supreme Court of the United States

LAWRENCE B. HUGHES,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

**On Petition For Writ Of Certiorari
To The Georgia Supreme Court**

PETITION FOR WRIT OF CERTIORARI

LAWRENCE B. HUGHES
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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- I. Is it a requirement within State Statute of Federal law for an indictment to be clear and precise within accusation?
- II. In review of deliberation stage was the state juror(s) confused concerning jury charge in area of state's indictment in *Count 1* and *Count 2*?
- III. With each error submitted before conclusion of closing argument, does the lead prosecution reveal the erroneous factual bases omitted at the conclusion of closing argument?
- IV. If the appellate counsel reiterate upon record of misconduct involving prosecution actual contribution including in the evidence or indictment; stating "*But ultimately, ladies and gentlemen it doesn't matter where the bullet came from.*" Wouldn't this be considered as evidence to finding upon?
- V. Did the trial court administer an erroneous finding of the defendant substantial rights were violated regarding the 14th Amendment "Due Process"?
- VI. In review of plain error analysis applied at Georgia Supreme Court acknowledgement of non-consideration was due, "Hughes did not raise the issue" was this legitimate rebuttal to contest error from review?
- VII. Was a proper review performed in the denial of justification charge even if petitioner was not the initial aggressor?

QUESTIONS PRESENTED – Continued

- VIII. Were the jurors deprived of any adequate opportunity to consider the justification defense?
- IX. Was the direct verdict of acquittal properly reviewed surrounding self-defense?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

RELATED CASES

- *The State of Georgia v. Lawrence B. Hughes*,
Case Number CR160687
- S20A1309, *Hughes v. The State*,
In Supreme Court of Georgia

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
RELATED CASES	ii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVI- SIONS INVOLVED.....	1
LEGAL ARGUMENT.....	2
STATEMENT OF THE CASE.....	9
REASON FOR GRANTING THE WRIT.....	12
CONCLUSION.....	13
INDEX OF APPENDICES	
APPENDIX A	
Supreme Court.....	A1
APPENDIX B	
Decision of State Superior Court.....	A13

TABLE OF AUTHORITIES

	Page
CASES:	
<i>Auman v. People</i> , 109 P.3d 647 (Colo. 2005).....	6
<i>Hatley v. State</i> , 290 GA. 480, 722 S.E.2d 67 (2012).....	9
<i>Heard v. State</i> , 261 GA 262, 403 S.E.2d 438 (1991).....	7
<i>Jenkins v. State</i> , 230 A.2d 262 (Del. 1967).....	4
<i>Jones v. State</i> , 220 GA App. 784, 470 S.E.2d 326 (Ga. Ct. App. 1996).....	7
<i>McMann v. Richardson</i> , 397 U.S. 759 (1970).....	9
<i>Means v. Solem</i> , 646 F.2d 322 (8th Cir. 1980).....	6
<i>Melendez-Diaz v. Massachusetts</i> , 557 U.S. 305 (2009).....	9
<i>Michigan v. Bryant</i> , 562 U.S. 344 (Fed. R. Evid. Serv. 1033, 2011).....	9
<i>Printup v. State</i> , 217 GA 495 458 S.E.2d 662 (Ga. Ct. App. 1995).....	7
<i>Quiroz v. State</i> , 662 S.E.2d 235 (Ga. Ct. App. 2008).....	3
<i>Simpson v. State</i> , 876 P.2d 690 (Okla. Crim. App. 1994).....	8
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	3, 9
<i>Tripp v. State</i> , No. A18A1782, 2019 WL 1054261 (Ga. Ct. App. 2019).....	9
<i>United States v. Lander</i> , 688 F.3d 1289 (11th Cir. 2012).....	8, 12

TABLE OF AUTHORITIES – Continued

	Page
<i>United States v. Madden</i> , 733 F.3d 1314 (11th Cir. 2013)	8
<i>United States v. Rodriguez</i> , 283 Fed.Appx. 743 (11th Cir. 2008).....	9
<i>Watts v. State</i> , 259 GA App. 531, 578 S.E.2d 231 (Ga. Ct. App. 2003)	7
<i>Yarber v. State</i> , 337 GA App. 40, 785 S.E.2d 677 (2016).....	9
 STATUTE AND RULES:	
<i>O.C.G.A. 24-1-103</i>	1, 2, 6, 12
<i>GA Constitution / Georgia First Enacted Felony Murder</i>	5
<i>O.C.G.A. 16-3-24</i>	2, 7
 OTHER:	
<i>Attorney/Client Relationship Canon [1.1]</i>	3
<i>Judicial Canon #3</i>	5

OPINIONS BELOW

The unpublished memorandum opinion of the Georgia Supreme Court for the Eleventh Circuit is included herein as Appendix A.

JURISDICTION

Petitioner Hughes appealed his conviction for Felony Murder, et al. (O.C.G.A. § 16-5-1(c)) an offense for which death could have been imposed, giving this court exclusive jurisdiction. GA Const. Art. VI § VI III (8), *Neal v. State*, 290 GA 563, 567-72, 722 S.E.2d 765 (2012). Judgment of conviction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Plain Error analysis – State Statute (O.C.G.A. 24-1-103) GA Constitution 5th Amendment; 14th Amendment

Article IIIA, IIIB, V, IV

Federal Statute: Federal Rule Procedure (R).52

Appendix A: Supreme Court//Acknowledge excluded error disjunctly brought forth

Appendix B: Decision of Superior Court//Factor for misapplication

Failure of Justification Charge: State statute (O.C.G.A. 16-3-21) through (O.C.G.A. 16-3-24) GA Constitution 6th Amendment; 14th Amendment.

LEGAL ARGUMENT

- I. The misapplication of Plain Error analysis and failure to uphold state statute (O.C.G.A. 24-1-103) in lower Superior Court; and Georgia Supreme Court. Consideration of error submitted at the lower court (Case # CR160687) that misapplied harmless error analysis which was initially introduced during Motion for New Trial. *See: (Trial Transcript page 650; Lines 4-10)*. The petitioner appellate counsel (Kimberly L. Copeland) who raised the deficiency of trial counsel (Mr. Darden) and his performance which led up to trial and afterward. Regarding his non-contestation of Fatal Variance or rendering no objection; prior trial and afterward. *See: (Trial Transcript page 650; Lines 4-8)*. The same prejudicial error became obvious during deliberation stage where the juror made inquiry toward difference of Actual Act; result of causing death specified in juror charge and indictment. The juror made inquiry toward disparity between both counts and in jury charge *Count 1* and *Count 2* stating: *Count 1* Felony murder, read this way. "In the name of on behalf of the citizen of the State of Georgia, charge and accuse Lawrence Bernard Hughes with the offense of felony murder for that said Lawrence Bernard Hughes in the county of Chatham and State of Georgia on or about the 25th day of June 2015, while in the commission of a felony, to wit aggravated assault, did cause the

death of Jamon Epps, a human being, by shooting him, contrary to the law of the State of Georgia.” *Count 2 Felony Murder* (O.C.G.A. 16-5-1) and jurors afore said, “In the name of and on behalf of the citizen of the State of Georgia further charge and accuse Lawrence Bernard Hughes with the offense of Felony Murder for the said Lawrence Bernard Hughes, in the county of Chatham, State of Georgia on or about the 25th day of June 2015 while in commission of a felony to wit; possession of a fire arm by a convicted felon did cause the death of Jamon Epps a human being by shooting him contrary to the law of the State of Georgia.”

Thus, it was imperative of trial counsel in earlier proceeding to review the necessity of prosecution to properly setting forth and providing essential element of accusation. *See: (Quiroz v. State*, 662 S.E.2d 235). In common practice, prosecution accusation should have been properly reviewed and challenged. As result of trial counsel (Mr. Darden) deficiency in area of competence [1.1] *See: (Attorney/Client Relationship Canon)*. That states, “Attorney shall have legal experience and knowledge, also thoroughness.” Standard research of state’s indictment and language specified that should have ensured some type of defense and such error should have surfaced during earlier proceeding as prevention. *See: (Strickland v. Washington*, 466 U.S. 668 (1984)). Neither possibility nor actual logic supportive of petitioner being in direct possession of weapon that could directly have caused the victim’s death (where no evidence was shown) *See: (Trial Transcript page 150; Lines 18-20)* stating “Here are key facts to remember: One, no one is saying the defendant intended to kill Jamon

Epps he is not charged with intentionally killing Jamon Epps. No one is arguing that he did intentionally kill Jamon Epps.”

As a result of uncertainty, beyond a reasonable doubt presided when the juror who made inquiry toward deliberation stage. *See: (Trial Transcript page 651; Lines 10-17)*. As states “Again Ladies and gentlemen, you look at the wording in the indictment. You also have the charge which is the one gave you which is the law that applies in this case and you have the evidence. The evidence you heard and the physical evidence. You can put all the stuff together and make a decision on each one of the counts of the indictment”

“I hope that resolves this.”

Female Juror: No

The Court: It does resolve it?

Male Juror: Yes

Contradiction presided in the terminology usage or descriptive language pertaining the way specified in each count of Felony Murder. *See: (Trial Transcript page 650//Jury's note concerning difference//State's Indictment)*. Error presided in predicate felony to support same Count 2; thus, contrary to Felony Murder rule only being applicable in commission of an inherently dangerous felony. *See: (Jenkins v. State, 230 A.2d 262 (Del. 1967))*.

“Moreover application of rule to felonies not foreseeable dangerous would be unsound.” Therefore, reviewing circumstance of the status felony that

was utilized, such as “possession of a firearm by convicted felon” and usage in this current jurisdiction presided error. *See: (GA Constitution//Georgia first enacted a felony murder statute 1811).*

Thus, error revealing the inconsistency in state evidence that went contrary to (jury charge and indictment) and in return of “not guilty” on both aggravated assault and felony murder towards direct cause of victim death.

On remaining *Count 2* which permitted erroneous impression of detail, surrounding petitioner simply by being in mere “possession of firearm” which does not constitute result being cause of victim death. In review of error trial court made attempt to remain neutral. (*Judicial Canon #3*).

Thereafter uncertainty went uncorrected and counsel made diligent attempt to cure improper determination by requesting for direct verdict at latter stage of trial. *See: (Trial Transcript page 500; lines 19-25).* “Where mitigating circumstances surrounded self-defense.”

Trial counsel failure to drawing court attention to wording and descriptive nature specified in *Count 2* having caused the death of victim and placed the petitioner in harms way twice of actual death of victim. Therefore, exceeding the grand jury indictment and infringement upon petitioner constitutional aspect of 5th Amendment; 14th Amendment (GA Constitution and U.S. Constitution). Acknowledgment became evident during closing argument where prosecution made direct inference toward disparity in the evidence and allegation set forth contrary to was specified. *See: (Trail Transcript*

page 150; Lines 18-21). Thus, further harm was subjected after jury found petitioner not guilty of actual act of Aggravated Assault or Felony Murder, *See: (Auman v. People*, 109 P.3d 647, 671). Omission of statement render during trial of state witness, which was a close relative (surrounding being in possession of gun) this enabled the jury to find petitioner guilty. These same factors arose during appellate stage and the Attorney General who sought to undermine such arguments due to misapplication of plain error analysis in compliance of state statute. *See: (O.C.G.A. 24-1-103)*, without weighing each of the factors properly that met circumstances of petitioner or coincide with plain error analysis. Prosecution rebuttal was in reference to ground which did not properly surface to attention of lower court review. This should have excluded such rebuttal in compliance to such statute; as stated in cases tried after January 1, 2013 (O.C.G.A. 241-103). Expanded the plain error doctrine to permit the appellate court to consider such ground. The petitioner circumstance met such criteria in chronological sequence in compliance to plain error doctrine.

- II. Trial court denial of jury charge of justification and circumstance improperly reviewed at both lower superior court and at appellate stage. In review of jury charge that was requested by defense and circumstance introduced regarding justification charge being administered by the trial court for consideration and was erroneously declined. Theory set forth by prosecution which was introduced and caused of a direct interference in properly accessing each factor of such defense. *See: (Means v. Solem*, 646 F.2d 322 (8th Cir. 1980)).

Presumption of petitioner seeking mischief was prosecution primary opportunity to discredit defense by improperly introducing character. *See: (Trial Transcript page 143 opening statement Lines 16-19)*. This enabled means for justification defense to be precluded from jury and fictitious sequence of event that lead up to the indictment diverting attention of other individual not mentioned that were the primary aggressor in the incident surrounding felony murder. *See: (Trial Transcript page 329; Line 15-18)*. Clearly, the petitioner sole argument became undermined which made petitioner inapplicable in accordance to the state statute. *See: (O.C.G.A. 16-3-24)*. Stating "One shall be immune from criminal prosecution therefore unless in the use of deadly force such person utilizes a weapon" These factors were improperly reviewed. *See: (Printup v. State, 217 GA 495, 458 S.E.2d 662)*. Similarity of trial court erroring in failure to instruct the jury on the law of self-defense consideration that occurred and evidence showing petitioner not being the initial aggressor. *See: (Heard v. State, 261 GA 262, 403 S.E.2d 438)*. Prosecution utilized a persuasive tactic to introduce character which may have swayed trial court basing their finding upon status of convicted felon in possession of firearm also one seeking mischief. *See: (Jones v. State, 220 GA App. 784, 470 S.E.2d 326)*. That even in status of one being a convicted felon, defense was still eligible and should not be prohibited an adequate opportunity of defending one-self or impression otherwise. No other collaborating evidence could support trial court refusal of circumstance specified. *See: (Watts v. State, 259 GA App. 531, 578 S.E.2d 231)*. "To justify a charge

on a given subject, it is not necessary there should be compelling evidence but enough if there is something from which a legitimate process of reasoning can be drawn.” Jury reasoning was limited which restricted life threatening situation that occurred beginning with 1.) There was an error or defeat that has not been intentionally relinquished or abandoned. During Motion for New Trial, deficiency of trial counsel came forth in the area of objection being render upon records. Therefore, abandonment of fatal variance became obvious first when juror went to deliberate, and complication arose in reading verdict surrounding basic legal question. *See: (United States v. Lander, 688 F.3d 1289 (11th Cir. 2012))*. The legal error must be clear or obvious rather than subject to reasonable dispute. By the juror addressing a general note before attention of the courts and inquiring of difference in terminology. *See: (United States v. Madden, 733 F.3d 1314 (11th Cir. 2013))*. the error must have affected the outcome of the trail. Petitioner “Due Process” was infringed upon placing him in harm’s way twice after acquittal of Aggravated Assault and Felony Murder, which were only logical result of victim death. Generally summing up the last and final conclusion for requirement. *See: (Simpson v. State, 876 P.2d 690 (Okla. Crim. App. 1994))*. being overlooked and not direct cause resulting from petitioner. Thus, trial court failure to instruct the jury on justification was a reversible error.

- III.** Hughes received the ineffective assistance of counsel in violation of his 6th Amendment. The 6th Amendment guarantees every criminal defendant the right to effective assistance of counsel. *See:*

(*Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *McMann v. Richardson*, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 1449, 25 L.Ed.2d 763 (1970)). Generally *Strickland* held that ineffective assistance of counsel consists of performance below minimum standard of competence and resulting prejudice. *See*: (*Tripp v. State*, No. A18A1782, 2019 WL 1054261, at 2 (GA Ct. App. Mar. 6, 2019); *Lawrence v. State*, 257 GA 423, 423, 360 S.E.2d 716, 716 (1987); *United States v. Rodriguez*, 283 Fed.Appx. 743 (11th Cir. 2008)). If the defendant makes insufficient showing on one component the court need not address the other. *Id.* at 688-89, 104 S.Ct. 2052. Unless the defendant can rebut the “strong presumption that the counsel’s performance was constitutionally deficient. *Id.* at 689 104 S.Ct. 2052, *U.S. Const. Amend. VI*, *GA Const. Art. I § I, Para. XIV. (Failure to object may constitute a waiver of these constitutional rights)*. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 313, n. 3, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009); *Hatley v. State*, 290 GA 480, 722 S.E.2d 67 (2012); *Yarber v. State*, 337 GA App. 40, 785 S.E.2d 677 (2016). *Cf. Michigan v. Bryant*, 562 U.S. 344, 358, 131 S.Ct. 1143, 1155, 179 L.Ed.2d 93, 84 *Fed. R. Evid. Serv.* 1033, 2011.

STATEMENT OF THE CASE

On June 25, 2015 at approximately 9-10 PM, in Savannah, Georgia, a gunfight occurred among several participants. The incident ensued on Skidaway Road near the Top China Restaurant. A witness, Ms. Janie

Geiger, was sitting in her vehicle in front of a laundromat, across from the Chinese Restaurant when she heard what she believed to be gunfire. A few seconds later, Ms. Geiger's vehicle was hijacked at gunpoint by a tall, skinny African American man. She had seen the man ducking and running from the direction of the restaurant with a firearm in his hands as numerous gunshots were heard. Ms. Geiger was afraid she would be shot. The firearm was long and looked like a rifle or a cutoff gun. The man ordered Ms. Geiger to get out of her car because he needed it. She relinquished her vehicle and the man immediately left the scene. (*TR: 155-158, 165-169, 174*).

Upon the arrival of a forensic investigator from the Savannah Police Department Police Department (SPD), numerous pieces of dark tinted glass, eighteen (18) 762x39 Tulammo shell casings were collected from the drive thru area of the restaurant and the grassy area at the restaurant and the parking lot. The scene was then photographed, and videotaped. The investigator also noted a strong odor of gasoline where it appeared gasoline was leaking into the street from a vehicle in the parking lot. (*TR: 175-183, 186, 193*). Investigators followed the leaking line of gasoline which eventually led to Tennessee and Maryland Avenues in Savannah, where they found Ms. Geiger's vehicle parked with Hughes' blood on the steering wheel. (*TR: 189-193*).

On the same date of the incident, Sgt. Robert Mowers of SPD was dispatched to Laroche Avenue, at the entrance to the Ponderosa Apartment Complex. Upon

his arrival, he found a black SUV [Yukon] with the lights on sitting in the middle of the street. The vehicle appeared to have left the Top China Restaurant where the shootout occurred. There was a strong odor of gasoline and he discovered a large black male in the driver's seat slumped over. He appeared to have sustained serious trauma. (*TR: 198-203, 207*). Later, Crime Scene Investigator (CSI) Officer Todd Selva (SPD) arrived at the Laroche Avenue location and began collecting evidence, photographing and videotaping the scene. The Yukon had numerous bullet holes in it, with bullets entering and leaving the SUV; the back glass was shot out and there was a strong odor of gasoline. The CSI also collected a number of .40 caliber and .223 rifle casings from the rear cargo area of the Yukon. A .40 caliber pistol was found on the floorboard and a Bushmaster .223 rifle was found on the back seat of the Yukon. Officer Selva recovered a total of nineteen (19) .223 shell casings, three (3) Winchester .40 casings, nine (9) Hornady .40 casings and four (4) PMC .40 casings. (*TR: 209-218, 235*). Forensic Officer Jenna Rojas, SPD also arrived on the scene and processed evidence. She observed a bullet entry hole in the back of the headrest of the driver's seat. This discovery was consistent with the mortal wound sustained by Jamon Epps, the victim of the Two Counts of Felony Murder. (*TR: 254-256, 310-314*).



REASON FOR GRANTING THE WRIT

In consideration of each enumeration of error submitted or specified in the above writ (before Honorable Court). Relating to such issues or grounds that has continuance affected majority of petitioner collectively surrounding substantial rights that were misapplied and upheld by U.S. Constitution (6th Amendment; 14th Amendment; Article III A, III, IV, V).

Concerning subsection (I) The misapplication of plain error analysis and failure to uphold state statute (*O.C.G.A. 24-1-103*). Lower assessment of predicate felony “possession of firearm by convicted felon” that are obvious error and not direct cause of victim death and disparity in state accusation that usage is erroneously applied. *See: (Nash v. State, 222 GA App. 766, 766-767)* Thereafter, higher review has sought to rectify only selective case with similar finding majority opinioned. *See: (United States v. Lander, 668 F.3d 1289 (11th Cir. 2012); United States v. Fuentes, Coba, 738 F.2d 1191, 1196 (11th Cir. 1984))*. Demonstration of Plain Error becomes an issue during deliberation stage and the indecisiveness illustrated thru the general letter of inquire toward trial court for further instruction. *See: (Collier v. State, 288 GA 756, 707 S.E.2d 102)*. Therefore, addressing (Nahmius, J., specially concurring) where same jurisdiction Georgia Court have recognized plain error in only limited circumstances.

Second enumeration of error submitted was subsection (II) Trial court denial of jury charge of justification and circumstances improperly reviewed at both

(lower Superior Court, and at appellate stage). Assessment of petitioner not being primary aggressor and hostile confrontation should have satisfied trial court for jury charge instruction to be administered. Beyond character projected by the prosecution diverting attention of the individual does not mention that were primary aggressor in the incident. *See: (Tarvestad v. State, 261 GA 605, 606, 409 S.E.2d 513) and (Smith v. State, 290 GA 768, 770-71, 723 S.E.2d 915)*. Hence, the trial court should have given a justification charge. *See (O.C.G.A. 16-3-21) through (O.C.G.A. 16-3-23)*.

Thus, had court honored state statute or even at the appellate level, no other solution could have surfaced. Therefore, trial counsel should have been resourceful in preparation to adequately review of defense to improve performance in accordance sound strategy.

◆

CONCLUSION

The trial of the petitioner has resulted in miscarriage of justice. Thus, non-contestation of fatal variance that brought forth confusion prohibit a fair assessments of state case exceeding the evidence. The Honorable court to rectify court failing to properly charge the jury of petitioner constitutional rights were violated by his counsel deficient performance. Therefore, the court reverse decision of both

lower courts and Georgia Supreme Court erroneous finding.

Respectfully submitted,

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