

No. _____

ORIGINAL

24-6430

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

OCT 26 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Maurice Fleming — PETITIONER
(Your Name)

vs.

Georgia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF GEORGIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Maurice Fleming
(Your Name)

Telfair State Prison P.O. Box 549 210 Longbridge Rd.
(Address)

HELENA, GEORGIA 31037
(City, State, Zip Code)

229-868-7721
(Phone Number)

QUESTION(S) PRESENTED

A request in writing a charge on the principle that a conviction cannot be had on the uncorroborated testimony of an accomplice see OCGA § 24-4-8: trial court failed to give that instruction At the conclusion of the jury charge And Fleming's counsel reserved objection for appeal that the trial court's failure to charge as requested requires reversal of this conviction. The majority opinion ignores both an important and applicable principle of law and a key difference between this case and the co-indictee's case. in so doing majority opinion weakens the statutory principle on which Fleming's request to charge is based: The phrasing of the majority opinion's holding and the phrasing in Jenkins, do violence to the Statutory principle in aid of which the requested charge should be given the majority holds that there is no need for the charge, where the state relies on other evidence, including a defendant's confession a part from the accomplice testimony The case cited in Jenkins in support of that proposition (other than (269 GA.251) Lanford) was Hall v. State 241 Ga 252 (7) (244 SE 2d 833) (1978) where this court held that the charge was not required because "there were other witnesses to the crime: The majority opinion in this case broadens the scope of the evidence which obviates the need for the jury charge from "other witnesses to the crime to other evidence" Hall OCGA Maddox v. State 136 Ga App 370 (4) (221 SE 2d 231 (1975).

Note Attach: Is the Jury Instruction, on the Jury verdict a ~~double~~ Jeopardy for using Armed Robbery for both count (1+2). double

Note Attach: Is the Aggravating Circumstance as to sentencing a conspiracy charges

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Superior Court. Before Judge Harvey from Atlantic Circuit

Disposition:

Judgment affirmed.

Counsel

Ray C. Smith, for appellant.

Dupont K. Cheney, District Attorney.

J. Thomas Durden, Assistant District Attorney, Thurbert E Baker, Attorney General, Paula K Smith, Senior Assistant Attorney General, Allison B. Goldberg, Assistant Attorney General, for appellee.

Judges: Hunstein, Justice All the Justices concur, except Benham, Chief Justice (Judge Flechter joined) Benham in dissents

RELATED CASES

Supreme Court of GEORGIA

269 Ga. 245, 497 S.E. 2d 211; 1998 Ga. LEXIS 380; 98 Fulton County D. Rep. 919 S97A1659. March 16, 1998

Bush v. State 267 Ga 877. (485 S.E. 2d 466) (1997)

Jenkins v. State, 268 Ga 468 (9) (491 S.E. 2d 54) (1997)

(269 Ga 251) Hall v. State, 241 Ga 252 (7) (244 S.E. 2d 833) (1978)

Lanford v. State, 148 Ga App. 377 (2) (251 S.E. 2d 395) (1978)

see ea. Maddox v. State, 136 Ga App. 370 (4) (221 S.E. 2d 231) (1975)

Fleming v. State, 265 Ga 541 (458 S.E. 2d 638) (1995)

Appellant's application for interm appellate review was denied April 17 1996. Fleming v. State, S96R0971.

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INDEX TO APPENDICES

- APPENDIX A Maurice Fleming v. State Supreme Court of Georgia
269 Ga 245, 497 SE2d 211, 1998 Ga Lexis 380 98 Fulton County D. Rip 919
\$97A1659 March 16, 1998 Decided
- APPENDIX B A notice of appeal was filed June 19, 1997 and the case was docketed on
July 17, 1997, the appeal was orally argued on October 14, 1997
- APPENDIX C The motion for new trial, filed July 22, 1996 and amended on March
26, 1997, was denied June 10, 1997
- APPENDIX D The state filed a pre-indictment notice of intent to seek
the death penalty December 9, 1993
- APPENDIX E In the Superior Court of Screven County verdict sentencing
06-22-96
- APPENDIX F Change Venue from Liberty County In The Superior Court
of Screven County trial 06-21-96

TABLE OF AUTHORITIES CITED

CASES	Benham, Chief Justice dissenting Judge Fletcher (Joined) (Benham in desent)	PAGE NUMBER ("1-6") Benham, pg (4-6)
(269 Ga 250) (497 SE 2d 215)		
269 Ga 245, 497 SE 2d 211, (1998) G. LEXIS 380, 98 Fulton County D.Rep. S97A1659		
(Cit) Bush v. State, 267 Ga 877, 878 (485 SE 2d 466) (1997)		
Fleming v. State, 265 Ga 541 (458 SE 2d 438) (1995)		
Jenkins v. State, 268 Ga 468 (9) (491 SE 2d 54) (1997)		
Lanford v. State, 148 Ga App. 377 (2) (251 SE 2d 395) (1978)		
Cited in the Jenkins opinion (269 Ga 251) Lanford) was Hall v. State 241 Ga 252 (7) (244 SE 833) (1978), where this Court held that the charge was not required because "there were other witnesses to the crime..." The majority opinion in this case broadens the scope of the evidence which obviates the need for the jury charge from "other witnesses to the crime" to "other evidence."		
The proper rule applicable to this case, consistent with the holding in Hall, is that a requested charge on the principle in O.C.G.A. §24-4-8		
STATUTES AND RULES		
Must be given unless there is evidence other than an accomplice's testimony which directly connects the defendant to the crime. See e.g. Maddox v. State 136 Ga App 370 (4) (221 SE 2d 231) (1975), where the defendant's own testimony and evidence that a car similar to the defendant was seen in town before and after the crime, were sufficient to corroborate an accomplice's testimony, but the failure to give the requested charge on the requirement of corroboration required a new trial. Because there was no testimony in this case other than the accomplice's which directly connected Fleming to the crime, I am convinced convinced that the majority opinion is incorrect in finding no reversible error in the failure to charge. I must, therefore, dissent.		

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at 269 Ga. 245, 497 SE.2d 211, 1998 Ga. LEXIS 380, 98; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the SUPREME COURT OF GEORGIA court appears at Appendix A to the petition and is

- ☐ reported at 269 Ga. 245, 497 SE.2d 211, 1998 Ga. LEXIS 380, 98; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was April 1, 1998.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
April 1, 1998, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including none (date) on none (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Dissent by: Benham (269 Ga 250) Benham, Chief Justice, dissenting.
Because the majority opinion holds that the trial court did not commit reversible error in failing to give Fleming's requested (497 SE2d 215) charge on the necessity of corroboration of an accomplice's testimony, I must dissent to the affirmance of Fleming conviction. Fleming requested in writing a charge on the principle that a conviction cannot be had on the uncorroborated testimony of an accomplice. see OCGA § 24-4-8. The trial court failed to give that instruction. At the conclusion of the jury charge Fleming's Counsel reserved objections for appeal. Fleming now contends, and I am compelled to agree, that the trial court's failure to charge as requested requires reversal of his conviction. The majority opinion ignores both an important and applicable principle of law and key difference between this case and the co-indictee's case. In so doing the majority opinion weakens the statutory principle on which Fleming request to charge is based. The principle ignored by the majority opinion is that the jury could have chosen to disbelieve the corroborating evidence, including Fleming's confession. "The sufficiency of the corroboration of the testimony of the accomplice to produce conviction of the defendant's guilt is peculiarly a matter for the jury to determine (cited)." Bush v. State 267 Ga. 879, 878 (485 SE2d 466) (1997). Thus, the mere fact that there is other evidence which could serve as corroboration does not dispense with the need for the requested charge because the jury, as the exclusive judges of credibility, could have rejected the other evidence and convicted solely on the accomplice's testimony. The key difference between this case and the one chiefly relied upon by the majority opinion (Jenkins v. State, 268 Ga 468 (9) (491 SE, 2d 54) (1997), is that although the opinion in that case does not say so, the record of that case shows that Jenkins did not request a charge on corroboration. Thus, Lanford v. State, 148 Ga App 372 (2) (251 SE, 2d 395) (1976).

STATEMENT OF THE CASE

Indictment
Case no[#] 93-R-6877

Judge: John Harvey

Charges: Felony Murder
merge Armed Robbery

Change Venue from Liberty County

To Superior Court Screven County. Trial Court
Change Venue after appellant had picked Jurys
for trial in Liberty (1995). The trial court change venue
because the court wanted a wrongful conviction.
The court made fixture with evidence. Took connection
of appellant in this case. And wrongfully convicted
Appellant as if I committed the whole case. October 8, 1993
The four men went to the store in a car driven by
Terry Roberts Cedric Brown was armed with a brown
Titan .25 calibre pistol. Jenkins used a chrome or
nickel plated .25 with a white grip. which appellant had
taken from a cousin. No charges of theft is against appellant.
Roberts parked the car behind the store and remained with
it while appellant and the other three man went to the
store. The men left after finding too many people in there.
while waiting for the store to empty out. Cedric Brown
discussed the need to kill the victim because he would be able
to identify him. There after appellant and the other men returned
Appellant did not go in the store. Cedric Brown demanded money
from the victim and both he and Jenkins shot the victim after
the man refused to comply. The victim died of five gunshot wounds; head,
neck and upper shoulder. which were two separate .25 calibre pistols
Shawn Brown did open the cash reaister to take money. Appellant open
the door after the crime was commit and All four men left and went
back to the car.

REASONS FOR GRANTING THE PETITION

The Court committed reversible errors. The Court ignores important principle. And because this was a death penalty case it matters. The Court gave the jury wrong instruction. I requested in writing about the charges. Knowing about the crime and committing the crime are different elements and different degrees. Evidence shows other co-indictee's crime. I have condition of Post traumatic stress syndrome because of the wrongful conviction. And me, Appellant being charged for somebody else's action is unconstitutional.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Maurice Fleming

Date: December 31, 2024