

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

HANNAH RENEE PAYNE)
)
Appellant,) Case No.: S26A0459
)
) Clayton County
) Superior Court
v.) Lower Court Case No.:
) 2019CR01737-14
STATE OF GEORGIA)
)
Appellee.)

SUPPLEMENTAL BRIEF OF APPELLEE BY THE DISTRICT ATTORNEY

Honorable Tasha M. Mosley
District Attorney
Clayton Judicial Circuit
State Bar No.: 526533

Deborah Leslie
Assistant District Attorney
Clayton Judicial Circuit
State Bar No.: 447070

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SUPPLEMENTAL BRIEF OF APPELLEE

1. Introduction

Pursuant to this Court's order the undersigned counsel for the State of Georgia, respectfully submits this Supplemental Brief to correct cases that were cited for propositions not supported by the actual holdings of those decisions; case citations that do not correspond to existing Georgia or federal precedent; and/or case quotations that do not accurately reflect the language of the cited opinions contained in the original Brief of Appellee filed on December 16, 2025.

2. Withdrawal of Incorrect Authorities

The State hereby withdraws reliance on the following authorities previously cited:

1. Smith v. Francis, 253 Ga. 782 (1985) p.20-21
2. Mullins v. State, 364 Ga. App. 200 (2022) p.21
3. Johnson v. State, 367 Ga. App. 344 (2023) p.21-22
4. Mahan v. State, 282 Ga. App. 201, 204 (2006) p.22, 25, 26
5. Wainwright v. State, 305 Ga. 63 (2019) p. 24
6. Smith v. State, 314 Ga. App. 583 (2012) p. 24, 26

7. Jones v. State, 296 Ga. 561, 567 (2015) p. 25
8. Overstreet v. Warden, 811 F.3d 1283 (2016) p. 26
9. Humphrey v. State, 281 Ga. 596, 599 (2007) p.30

The State respectfully requests that the Court disregard the aforementioned citations and/or quotations in its consideration of the issues presented.

These errors were not intentional. The State takes full responsibility for ensuring the accuracy of its filings and regrets any confusion caused to the Court. **See Exhibit A.**

Importantly, the withdrawal of the aforementioned authorities does not affect the validity of the State's arguments or the correctness of the trial court's ruling.

3. Strickland Claim of Deficient Performance and Prejudice

To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy both prongs of Strickland v. Washington, 466 U.S. 668 (1984): (1) deficient performance and (2) prejudice. Payne has proven neither.

Payne cannot establish deficient performance because trial counsel was not ineffective for failing to request jury instructions that were not authorized by the evidence. Counsel's performance is not deficient for declining to pursue unsupported defenses.

In addition, Payne cannot establish prejudice. To demonstrate prejudice under Strickland, a defendant must show a reasonable probability that, but for counsel's deficient performance, the outcome of the trial would have been different. That showing is absent here.

The evidence was overwhelming. Multiple eyewitnesses testified that Payne was the aggressor and the victim was unarmed and not posing an imminent threat of unlawful force against a third party. Considering this evidence, there is no reasonable probability that the omitted requested jury instructions would have changed the outcome.

4. The Evidence Did Not Support a Citizen's Arrest Defense

A private person may arrest an offender when the offense is committed in the person's presence or within the person's immediate knowledge. See O.C.G.A. § 17-4-60. The use of force in effectuating a citizen's arrest must be reasonable and proportionate. Deadly force is

not authorized unless justified.

There was no evidence that Payne was attempting to detain the victim pursuant to a lawful citizen's arrest. The record contains no evidence that the victim committed a felony in Payne's presence or that she was acting to immediately apprehend the victim.

The evidence showed that Payne pursued, confronted, and used deadly force against an unarmed non-threatening motorist in circumstances not associated with a lawful arrest. Because there was no evidence supporting each statutory element of a citizen's arrest, trial counsel was not deficient for declining to request an unauthorized charge.

5. The Evidence Did Not Support a Defense of Others

Instruction

Under O.C.G.A. § 16-3-21, a person is justified in using force to defend a third person only when there is a reasonable belief that such force is necessary to prevent imminent unlawful force against that third person.

The record is devoid of evidence that any third party was under an imminent threat of unlawful force at the time of the shooting. There

was no evidence that the victim was threatening or using force against another person when Payne shot him. Therefore, the trial counsel correctly declined to request an unauthorized charge.

**6. No Strickland Prejudice Because the Requested Defenses
Were Unauthorized**

Assuming arguendo that trial counsel should have requested these instructions, Payne cannot establish prejudice because the instructions were not authorized by the evidence. Georgia law is clear that trial courts should not instruct juries on defenses unsupported by the record, because it risks confusing the jury and misapplying the law. Neither citizen's arrest nor defense of others were supported by the evidence, and no reasonable probability exists that the omitted instructions affected the outcome. Therefore, Payne's ineffective assistance claim fails as a matter of law.

CONCLUSION

The State respectfully withdraws any previously cited authorities that were inaccurate or unsupported and submits that the trial record fully supports affirmance.

Because Payne has failed to establish either deficient performance or prejudice under Strickland v. Washington, and because the requested defenses were not authorized by the evidence, the judgment of the trial court should be affirmed.

This submission does not exceed the word count imposed by Rule 20.

Respectfully submitted,

/s/Deborah Leslie

Deborah L. Leslie
Assistant District Attorney
State Bar No. 447070

Tasha Mosley
District Attorney
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IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

HANNAH RENEE PAYNE)
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Appellant,) Case No.: S26A0459
)
) Clayton County
) Superior Court
v.) Lower Court Case No.:
) 2019CR01737-14
STATE OF GEORGIA)
)
Appellee.)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing APPELLEE’S SUPPLEMENTAL BRIEF upon counsel for Payne by delivering upon all parties via the United States Mail (First Class) in an appropriately addressed envelope with adequate postage as follows:

Nicholas Nunn
Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334
nunn@law.ga.gov

Andrew Fleischman
Sessions & Fleischman, LLC
3155 Roswell Road, Suite 220
Atlanta, GA 30305

Brian Steel
The Steel Law Firm, PC
1800 Peachtree Street NW Suite 300
Atlanta, GA 30309

This 27TH day of March, 2026

/s/Deborah Leslie

Deborah L. Leslie
Assistant District Attorney
State Bar No. 447070

Tasha Mosley
District Attorney
Clayton County
9151 Tara Boulevard
Jonesboro, Georgia 30236
(770) 477-3450 Office
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**IN THE SUPREME COURT
OF GEORGIA**

HANNAH PAYNE)	
)	
Appellant,)	Docket No.: S26A0459
)	
v.)	
)	APPEAL FROM SUPERIOR COURT
THE STATE OF GEORGIA,)	CLAYTON COUNTY
)	CASE NO. 2019CR1737-14
Appellee.)	

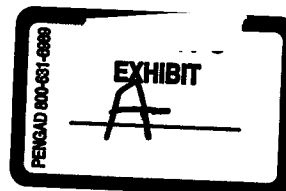
AFFIDAVIT OF DEBORAH LESLIE

STATE OF GEORGIA
COUNTY OF FAYETTE

I, Deborah Lorraine Leslie, do hereby affirm that the following information is true and correct to the best of my knowledge:

1. I am the Assistant District Attorney for The State of Georgia in this matter.

Pursuant to the Supreme Court’s order to provide a complete explanation, based on all information within my possession, as to how the September 12, 2025, order denying the motion for new trial came to include case citations that do not exist,



and/or cases ~~that~~ were inaccurately referenced, or did not support the propositions for which they were cited, the undersigned respectfully submits the following:

a. In preparing the proposed order to the trial court, the undersigned intended to provide a more detailed explanation of the relevant legal principles, particularly those related to ineffective assistance of counsel, citizen's arrest statute, legally unsupported instructions, defense of others statute, and justification. In an effort to strengthen and more fully support the order, additional cases were incorporated that were identified through expanded legal research as potentially reinforcing those principles.

However, in retrospect, I acknowledge that this process relied on traditional and AI as research tools. Case references generated by AI were not independently verified before inclusion. As a result, multiple cases either were inaccurately referenced for a proposition that did not correctly reflect the holding of that case, and/or the case did not exist. Counsel candidly acknowledges that it is her responsibility to ensure that all cited authority is accurate, properly attributed, and directly supportive of the propositions for which it is offered. The inclusion of these citations was not intended to misstate the law or mislead the Court, but rather an effort, to provide a more detailed legal framework.

1. In conducting expanded legal research using AI-based tools to identify additional authority supporting the principles set forth in *Strickland v. Washington*, the undersigned located what appeared to be *Reynolds v. State*, 306 Ga. 630 (2019). This case, however, was fictitious and was inadvertently cited on pages 10 and 22 of the trial court's order.
2. The expanded legal research using AI-based tools identified additional authority supporting the principles set forth in the citizen's arrest statute, the undersigned located what appeared to be *Harbuck v. State*, 288 Ga. 768 (2011). This case was also fictitious and was cited on page 11 of the trial court's order.

3. Further, the expanded legal research using AI-based tools to identify additional authority supporting the principle that Georgia Courts have routinely declined to find prejudice where the omitted citizen's arrest instruction was factually or legally unsupported, the undersigned located what appeared to be *Jones v. State*, 283 Ga. 155 (2008). Likewise, this case was fictitious and was cited on page 11 of the trial court's order.
4. Moreover, the expanded legal research using AI-based tools to identify additional authority supporting the principle that Georgia Courts have routinely declined to find prejudice where the omitted citizen's arrest instruction was factually or legally unsupported, the undersigned located what appeared to be *Hughes v. State*, 283 Ga. 155 (2008). This case was also fictitious and was cited on page 11 of the trial court's order.
5. In conducting expanded legal research using AI-based tools to identify additional authority regarding justification and citizen's arrest instructions, the undersigned located *Manzano v. State*, 282 Ga. 557 (2007). However, the quotation attributed to that case, as cited on page 13 of the trial court's order, does not exist in the opinion.
6. The expanded legal research using AI-based tools to identify additional authority regarding justification and citizen's arrest instructions, the undersigned located *Durden v. State*, 327 Ga. App. 173, 179 (2014). Nevertheless, the quotation attributed to that case, as cited on page 13 of the trial court's order, does not exist in the opinion.
7. In addition, the expanded legal research using AI-based tools to identify supplementary authority concerning justification and citizen's arrest instructions, the undersigned located *Lang v.*

State, 344 Ga. App. 623, 627 (2018). Yet, the quotation attributed to that case, as cited on page 13 of the trial court's order, does not exist in the opinion.

8. In conducting expanded legal research using AI-based tools to identify other authority concerning the citizen's arrest instruction, the undersigned located *Nelson v. State*, 283 Ga. 119, 121 (2008). Nonetheless, the case, as cited on page 26 of the trial court's order, does not support the proposition for which it was offered.
9. In conducting expanded legal research using AI-based tools to identify additional authority concerning the citizen's arrest instruction, the undersigned located *Davis v. State*, 269 Ga. 276, 277 (1998). But, the case, as cited on page 26 of the trial court's order, does not support the proposition for which it was offered.

NOTE: The undersigned acknowledges that the citation results generated by the AI tool, in the above responses 1 - 9, were not independently verified prior to inclusion, and this failure to confirm the accuracy of the authority rests solely with the undersigned.

b. In preparation of the *State's Reply Brief to Defendant's Amended Motion for New Trial*, filed on May 2, 2025, the undersigned undertook efforts to expand and clarify the legal authorities supporting the State's position, particularly the arguments concerning ineffective assistance, justification, citizen's arrest, and defense of others instructions. In an effort to enhance the strength and completeness of the legal argument, the undersigned used a combination of traditional case law research and AI-based tools to identify additional relevant case law.

The AI tool produced results that contained case names and citations presented as supporting similar legal principles. Relying on what appeared to be legitimate citations, some of the results were incorporated into the reply brief and the proposed order submitted to the trial court. Some citations generated by the AI research tool were retained without independent verification. This failure to verify resulted in the inclusion of certain cases that either: (1) did not exist; (2) were misquoted or inaccurately paraphrased; or (3) did not, in fact, support the propositions for which they were cited.

c. During preparation of the *State's Amended Reply Brief to Defendant's Amended Motion for New Trial*, filed on August 8, 2025, the undersigned obtained additional legal authorities believed to support the State's position, particularly with respect to the arguments concerning ineffective assistance, justification, citizen's arrest, and defense-of-others jury instructions. To further strengthen these arguments, the undersigned utilized both traditional legal research methods and AI-based research tools.

However, certain citations generated by the AI tool were included without independent verification. This failure to verify resulted in the inclusion of authorities that either: (1) were misquoted or inaccurately paraphrased; or (2) did not, in fact, support the propositions for which they were cited.

Although some citations that appeared in prior pleadings were not included in the *State's Amended Reply Brief* filed on August 8, 2025, due to variations in research methods and formats, the AI based research process, nevertheless yielded additional authorities that ultimately did not support the propositions for which they were offered.

d. The hearing on the motion for new trial was conducted via Zoom, during which the connection was intermittent and at times unclear. As a result, the State requested permission to supplement the record, which the Court granted. Consequently, on August 19, 2025, the State filed its supplemental brief. V11-66.

In preparing the State's *Supplemental Brief to the State's Amended Reply Brief to Defendant's Amended Motion for New Trial*, filed on August 19, 2025, the undersigned, in an effort to refine and strengthen the presentation of legal authority based upon the hearing for the motion for new trial, utilized AI-based research tools. While those tools generated valid citations and accurately supported propositions for the newly identified cases, some citations from prior pleadings that did not support the propositions for which they were offered, were inadvertently reintroduced and cited again in the Supplemental and the proposed order submitted to the trial court.

~~e.~~ In the *State's Reply Brief* filed May 2, 2025, the following cases were cited but do not stand for the propositions they were offered: *Bryant v. State*, 268 Ga. App. 362 (2004); *Rumph v. State*, 307 Ga. 477 (2019); *Reed v. State*, 291 Ga. 10 (2012); *Davis v. State*, 285 Ga. 343 (2009).

In the *State's Amended Reply Brief to Defendant's Amended Motion for New Trial* filed August 8, 2025, the following cases were cited but do not stand for the proposition offered: *Martin v. U.S.*, 631 F.Supp. 3d 1281 (2022); *Prayor v. State*, 217 Ga. App. 56, 57 (1995); *Patel v. State*, 279 Ga. 750 (2000); *Carter v. State*, 269 Ga. 891 (1998); *Chapman v. State*, 273 Ga. 348 (2001); *Poole v. Dixon*, 2024 US. Dist. LEXIS 182354 (N.D. Fla., Oct. 7, 2024); *Rumph v. State*, 307 Ga. 477 (2019).

~~In the~~ *State's Supplemental Brief to State's Amended Reply Brief to Defendant's Amended Motion for New Trial* filed on August 19, 2025 *Mahan v. State*, 282 Ga. App. 201, 204 (2006) was cited in support of a proposition for which it does not stand.

f. In addition to the foregoing, the undersigned wishes to address several factors that may assist the Court in evaluating the circumstances.

First, the undersigned has carefully considered whether, and to what extent, these erroneous citations affected the substance of the State's arguments or the trial court's ruling. To the best of my understanding and belief, the legal positions advanced by the State did not depend solely on the fictitious or misattributed authorities, but were also supported by valid precedent and the trial record. I fully acknowledge, however, that the inclusion of any inaccurate citation is a serious matter.

Second, I have implemented specific safeguards to prevent any recurrence of this type of error. These measures include: (1) a firm requirement that every case citation, particularly those initially identified through technological or AI-based tools be independently verified in a recognized primary legal database before being included in any draft; (2) a dedicated citation verification step in my drafting process, during which each quotation, pinpoint citation, and parenthetical is checked directly against the underlying opinion; and (3) where practicable, a second-level review of citations by another attorney or qualified staff member before a brief or proposed order is finalized and filed. I reaffirm my unwavering commitment to the standards of candor, accuracy, and diligence that the Court properly expects of officers of the Court.

Third, reiterating in preparing the proposed order for the trial court's review and consideration, the undersigned sought to present a more concise and comprehensive analysis of the legal issues addressed in the motion for new trial as amended, particularly those related to ineffective assistance of counsel, the citizen's arrest statute, legally unsupported jury instructions, the defense of others statute, and the defense of justification. Therefore, the undersigned conducted expanded legal research to incorporate additional case law that appeared, at the time, to reinforce those governing principles.

Fourth, during that research, the undersigned utilized AI based tools to assist in identifying potentially relevant authorities. While the intention was to use these tools as an aid to supplement traditional research methods, certain citations generated through that process were not independently

verified before inclusion in the proposed order submitted to the trial court. As a result, several references were later determined either to be inaccurately quoted, incorrectly attributed, or, in some instances, to correspond to fictitious cases.

Fifth, while the undersigned utilized AI-based research tools to assist in identifying additional legal authorities, those tools produced a mixture of accurate case citations with correct summaries, as well as fictitious cases and cases that did not support the propositions for which they were offered. Because the undersigned was utilizing actual, on point cases to conduct the expanded legal analysis, it was mistakenly assumed that all the results generated through the AI tool were likewise accurate and reliable.

Sixth, the undersigned accepts full responsibility for this assumption and has since implemented verification procedures to ensure that all research results are independently confirmed through authoritative legal sources before inclusion in any future filing. I accept full responsibility for the inclusion of the erroneous citations. It was, and remains, my professional duty to ensure that all cited authorities are accurate, properly attributed, and directly supportive of the legal propositions advanced. The failure to verify each citation prior to inclusion in the proposed order was inadvertent and unintentional, and no effort was made, nor any intent existed, to misstate the law or mislead the trial court or the Supreme Court in any respect.

Seventh, the undersigned respectfully notes that these errors occurred in the context of more than 22 years of practice without any prior disciplinary action or adverse finding related to candor to the tribunal, misuse of authority, or any form of misconduct. I offer this not to diminish the seriousness of the present matter, but to assure the Supreme Court that this incident is entirely inconsistent with my professional history and with the standards I have continuously endeavored to uphold.

2. On August 6, 2025, the trial court conducted the hearing for the Motion for New Trial. Subsequently, uncertain of the date, the trial court instructed the undersigned to prepare a proposed order.

On August 28, 2025 at 3:06 p.m., the undersigned forwarded via email to the Judge Scott, law clerk E. Cornelius Johnson, and Attorney Fleischman, the State's Proposed Order Denying Defendant's Motion for New Trial in State v. Hannah Payne. On August 28, 2025, at 3:18 p.m., Cornelius Johnson acknowledged receipt of the proposed order. **Exhibit B.**

On September 12, 2025, the trial court filed its Order Denying Defendant's Motion for New Trial as Amended dated September 11, 2025. V1-444-476. Said Order was prepared by the undersigned and subsequently "Reviewed and edited by the Court." "And edited by the Court as needed," as specified on p. 32 of the trial court's order. V1-475.

The proposed order that was submitted to the trial court initially consisted of 37 pages. The undersigned has identified some revisions on the following pages:

p. 2 (¶ 1 of the statement of material facts); **p. 3** (¶¶ 1, 3);
p. 4 (¶¶ 3-5); **p. 5** (¶¶ 1-4); **p. 6** (¶¶ 1-3, 5); **p. 7** (¶¶ 2-5);
p. 8 (¶¶ 1, 3-5); **p. 9** (¶¶ 1-4); **p. 10** (¶¶ 2-4); **p. 11** (¶ 1);
p. 12 (¶¶ 3, 5); **p. 13** (¶¶ 1-3); **p. 16** (¶ 2);
p. 17 (¶¶ 1-4); **p. 18** (¶ 4); **p. 19** (¶ 3); **p. 20**; **p. 21** (¶¶ 1-2);
p. 22 (¶¶ 4-6); **p. 23** (¶¶ 4-5); **p. 24** (¶¶ 1-2); **p. 25** (¶¶ 2-3);
and **p. 32** (¶ 1).

The final order, as entered consists of 33 pages.

Finally, I again express my sincere regret for having submitted materials that contained erroneous and fictitious case citations. I fully understand that the Court must be able to rely without question on the accuracy of the authorities presented by counsel. I am firmly committed to ensuring that nothing of this nature occurs again in any future filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah Leslie", written over a horizontal line.

Deborah Leslie
Assistant District Attorney
Georgia Bar No. 447070

Clayton County District Attorney Office
9151 Tara Blvd.
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Jonesboro, Georgia 30237
Email: Deborah.Leslie@claytoncountyga.gov
Tel: (770) 477-3450

Deborah Lorraine Leslie

SIGNATURE OF AFFIANT

Deborah Lorraine Leslie

Deborah Lorraine Leslie

Dated: *March 26, 2026*

NOTARY ACKNOWLEDGEMENT

Subscribed and sworn to (or affirmed) before me this *26* day of

MARCH, 2026, by Deborah Lorraine Leslie, proved to me on the basis

of satisfactory evidence to be the person who appeared before me.

Wanda W Mitchell

Signature of Notary Public

(Seal)



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PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

DL

Deborah Leslie

😊 ↩️ ⏪ ⏩ 📧 📁 🗄️ ⋮

To: Jewel C. Scott; E. Cornelius Johnson

Thu 8/28/2025 3:06 PM

Cc: Andrew Fleischman <andrew@thesessionslawfirm.com>

! High importance

i You forwarded this message on Tue 3/24/2026 4:25 PM

[View conversation](#)

📎 PROPOSED ORDER HANNAH... ▾
Saved to OneDrive

Good day Judge Scott,

Attached for your review and consideration is the State's Proposed Order Denying Defendant's Motion for New Trial as Amended in State v. Hannah Payne Case No. 2019CR01737-14.

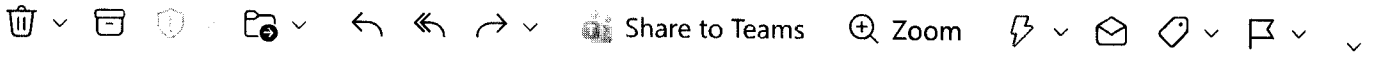
Please let me know if you need anything else.

With kind regards,

Deborah Leslie
Assistant District Attorney

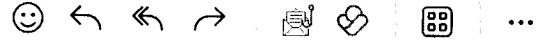
↩️ Reply ⏪ Reply all ⏩ Forward





Fw: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

DL Deborah Leslie



To: Deborah Leslie <thelesliegroup@bellsouth.net>

Tue 3/24/2026 4:26 PM

PROPOSED ORDER DENYING...
 Outlook Item

From: Microsoft Outlook <MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@claytoncountyga.gov>
Sent: Thursday, August 28, 2025 3:06 PM
To: E. Cornelius Johnson <ECornelius.Johnson@claytoncountyga.gov>; Jewel C. Scott <Jewel.Scott@claytoncountyga.gov>
Subject: Relayed: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

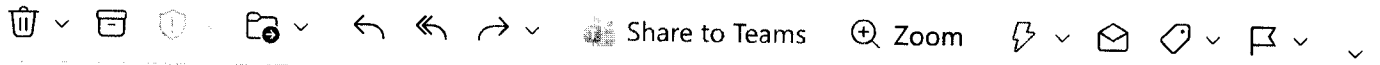
Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

E. Cornelius Johnson (ECornelius.Johnson@claytoncountyga.gov)


Jewel C. Scott (Jewel.Scott@claytoncountyga.gov)

Subject: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

Reply Forward



Fw: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

DL Deborah Leslie 
To: Deborah Leslie <thelesliegroup@bellsouth.net> Tue 3/24/2026 4:26 PM

 PROPOSED ORDER DENYING... 
Outlook Item

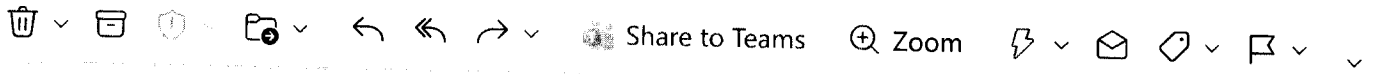
From: Microsoft Outlook <MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@claytoncountyga.gov>
Sent: Thursday, August 28, 2025 3:06 PM
To: Andrew Fleischman <andrew@thesessionslawfirm.com>
Subject: Relayed: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Andrew Fleischman (andrew@thesessionslawfirm.com)

Subject: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

 Reply  Forward



Fw: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

DL Deborah Leslie



To: Deborah Leslie <thelesliegroup@bellsouth.net>

Tue 3/24/2026 4:27 PM

From: Deborah Leslie <Deborah.Leslie@claytoncountyga.gov>
Sent: Thursday, August 28, 2025 3:18 PM
To: E. Cornelius Johnson <ECornelius.Johnson@claytoncountyga.gov>; Jewel C. Scott <Jewel.Scott@claytoncountyga.gov>
Cc: Andrew Fleischman <andrew@thesessionslawfirm.com>
Subject: Re: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

You're welcome.

From: E. Cornelius Johnson <ECornelius.Johnson@claytoncountyga.gov>
Sent: Thursday, August 28, 2025 3:17 PM
To: Deborah Leslie <Deborah.Leslie@claytoncountyga.gov>; Jewel C. Scott <Jewel.Scott@claytoncountyga.gov>
Cc: Andrew Fleischman <andrew@thesessionslawfirm.com>
Subject: Re: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

This email is from an internal sender

Afternoon,

Received. Thank you,

E. Cornelius Johnson

Staff Attorney to Judge Jewel C. Scott

Superior Court

Clayton Judicial Circuit

770.477.3341

ECornelius.Johnson@claytoncountyga.gov

9151 Tara Boulevard, Jonesboro, GA 30236

ClaytonCountyGA.gov

From: Deborah Leslie <Deborah.Leslie@claytoncountyga.gov>
Sent: Thursday, August 28, 2025 3:06 PM
To: Jewel C. Scott <Jewel.Scott@claytoncountyga.gov>; E. Cornelius Johnson <ECornelius.Johnson@claytoncountyga.gov>

Cc: Andrew Fleischman <andrew@thesessionslawfirm.com>

Subject: PROPOSED ORDER DENYING DEFENDANT'S MNT in State v. Hannah Payne

IN THE SUPERIOR COURT OF CLAYTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

*

vs.

*

CASE NO. 2019CR01737-14

*

HANNAH RENEE PAYNE,

*

*

Defendant.

*

*

ORDER DENYING DEFENDANT'S

MOTION FOR NEW TRIAL AS AMENDED

This matter came before the Court on August 6, 2025, for a hearing on Defendant's Motion for New Trial filed on December 26, 2023, and subsequently amended on March 27, 2025. On May 2, 2025, the State filed its Reply Brief to Defendant's Amended Motion for New Trial. The State amended its Reply Brief on August 5, 2025. On August 19, 2025, the State filed its Supplemental Brief in response to Defendant's oral arguments presented during the hearing..

The record shows that on or about June 19, 2019, Defendant was indicted by a Clayton County grand jury on multiple counts, including malice murder, felony murder, aggravated assault, false imprisonment, and possession of a firearm during the commission of a felony. (V1-75-78). Defendant was tried before a jury from December 4 through December 15, 2023, and found guilty on all counts. (V7-1509-1510)

Defendant was sentenced to life with the possibility of parole plus 13 years. (V8-1553). On December 26, 2023, Defendant timely filed a motion for new trial. Defendant filed an Amended Motion for New Trial on March 27, 2025.

Defendant alleges that she is entitled to a new trial because (1) trial counsel rendered ineffective assistance and/or the trial court committed plain error by failing to charge on

Defendant's sole defense of citizen arrest; (2) trial counsel's counsel performance was deficient for failure to argue that the victim may have fled from the scene because he possessed an illegal substance; (3) trial counsel was ineffective for failure to call material witnesses at trial; (4) the trial court wrongly denied Defendant the opportunity to cross examine former Detective Haywood regarding his drug use and termination from the Police Department; and (5) trial court committed plain error and/or trial counsel rendered ineffective assistance for failure to charge on the defense of others.

STATEMENT OF MATERIAL FACTS

On May 7, 2019, the Defendant made multiple 911 calls after allegedly observing the victim involved in a vehicular incident. Despite being advised by 911 dispatch to return to the scene and not pursue, Defendant followed the victim in traffic, ultimately resulting in a confrontation. Multiple eyewitnesses testified to observing the Defendant driving aggressively, blocking the victim's vehicle, exiting her Jeep with a handgun on her person, and engaging the victim with profanity and violence.

The evidence presented overwhelmingly supports that the Defendant engaged in an aggressive pursuit after being repeatedly instructed to refrain from doing so, blocked the victim's vehicle, initiated a physical altercation, and ultimately shot the victim. Eyewitness accounts, forensic evidence, and the Defendant's own statements contradict any claim of reasonable self-defense.

Terry Robinson, a Department of Corrections Officer, testified that he had worked for eight years in a capacity that involved managing the placement of inmates and assisting those with medical issues. (V3-708-709) Through his experience, he became familiar with medical symptoms associated with diabetes, including "glassy eyes" and confusion. (V3-709-710)

On May 7, 2019, Robinson witnessed the collision involving Kenneth Herring's maroon vehicle and a semi-truck. (V3-710, 712) He observed the maroon vehicle strike the side of the truck during a right turn, lift it slightly, and come to a stop. (V3-712) Mr. Herring appeared slumped over in the driver's seat, dazed and confused. (Id.) Robinson and the truck driver approached the maroon vehicle to check on Herring, at which time Robinson called 911. (V3-712-713)

Based on his experience, Herring's physical appearance suggested that he was experiencing a medical emergency. Robinson described Herring as "out of it," stating he believed Herring was experiencing a diabetic episode. (Id.) He made a second 911 call out of continued concern for Herring's condition. (V3-716-717) Robinson also checked on other individuals at the scene, including a woman in a Jeep. (V3-714)

The maroon vehicle's front end was heavily damaged, leaking fluid, oil, and water. (V3-716) Despite the vehicle's apparent damage, Herring exited the vehicle, walked around, then reentered and attempted to drive away. (V3-718-719) Robinson told Herring that he could not leave because he had been involved in an accident. (Id.) Nonetheless, Herring drove away, accelerating from the scene. (V3-719)

Robinson identified himself as a state officer and told those at the scene that help was on the way. (Id.) After Herring drove off, Robinson instructed bystanders to "take a picture of the tag." (V3-720-722) He denied instructing anyone, including the Defendant, to stop or pursue Herring, to use force, or to apprehend him. (V3-722) Defendant, who had been standing nearby, did not communicate with Herring and was not involved in the initial incident. (V3-720)

Defendant was already in her vehicle and moving when he said to take the picture. (V3-722, 750) He clarified that his comments about taking a picture were initially directed to Mr. Kimble, the semi-truck driver. (V3-734–735) Robinson was unaware that the Defendant was also on the phone with 911. (V3-735)

Robinson reaffirmed that based on his experience, Herring's behavior was consistent with a diabetic medical episode. (V3-748) He did not receive confirmation from any source that diabetes was involved but stated that Herring's demeanor reminded him of such a condition. (V3-753)

Kristy Supperer, a supervisor with Clayton County 911, testified that she received two 911 calls from the Defendant on May 7, 2019. (V4-777) She explained that all 911 operators undergo training before being allowed to handle emergency calls on the floor. (V4-777–778) The State introduced Exhibit 4, which included the two 911 calls made by the Defendant; it was admitted into evidence. (V4-778–779)

Supperer noted that the Defendant later made an additional 911 call from the same phone number. (V4-780) Supperer's testimony regarding call protocol and operator responses was deemed consistent with standard training. Despite a hearsay objection, the Court overruled it under the business records exception, recognizing Supperer's qualifications as both a supervisor and a trainer. (V4-784) She described how operators are trained to tell callers to return to the scene and to avoid following suspects—standard procedures supported by her experience. (V4-784)

Based on her review of the 911 recordings, she characterized the Defendant's tone as calm until the end of the call. (V4-786–787) She reiterated that operators may tell callers to get a

tag number if it's safe but never endanger themselves. (V4-787) For example, during rush hour, following another vehicle would generally be considered unsafe. (V4-787)

Supperer emphasized that 911 operators cannot assess emotional states merely based on how a caller speaks. Operators themselves are trained to remain calm regardless of the situation. (V4-787–788) If a caller insists on following someone despite being told not to, operators are trained to continue listening to gather information, as much can be learned from background noise. (V4-788–789)

She confirmed that the Defendant was told not to chase the subject and was instead instructed to return to the scene. (V4-789) Nonetheless, when the Defendant asked about obtaining the tag number, she admitted to “catching up to him”—an admission of pursuit. (V4-790–791) The operator advised her twice not to chase, and the Defendant acknowledged that she understood “100 percent”. (V4-791)

Teanna McCranny, a civilian witness, testified that she observed a Jeep block a pickup truck’s path, forcing it to brake abruptly. (V4-800) The aggressive nature of the maneuver immediately struck her as possible road rage. (V4-800–801) She then saw Defendant exit her Jeep and aggressively demand that the victim exit his truck, yelling at him and eventually pulling out a firearm. (V4-801) McCranny was in close proximity and became trapped in traffic due to the incident. (V4-801–802)

McCranny recalled that the victim slightly reversed his vehicle and hit Defendant’s Jeep. Defendant jumped through the victim’s driver-side window and began striking him. (V4-801) Amid honking and traffic buildup, McCranny maneuvered into the same lane as the Defendant and the victim. (V4-801) She called 911 while observing the Defendant block the victim's truck.

(V4-802) McCranny described the Defendant's demeanor as aggressive, repeatedly cursing and ordering the victim to exit the truck. (V4-803) She clarified that the Defendant pointed a gun at the victim shortly after exiting the Jeep—before the victim made any contact with her vehicle. (V4-805) McCranny's account aligned with her initial suspicion of road rage. (V4-806) The victim never exited his vehicle and appeared confused. (V4-807–808)

After the shooting, McCranny noted that the Defendant seemed "calm, almost aloof" and showed little emotion when handing the firearm over to the police. (V4-808) At the time the victim struck the Defendant's Jeep, she was already standing at his driver's side. (V4-808) McCranny, fearing stray bullets, moved her vehicle at that moment, and that's when she heard the shot. (V4-809)

McCranny explained she was initially side-by-side with the Defendant and victim prior to moving ahead. (V4-810–811) She clarified that the Defendant cut the victim off, forcing a sudden stop that nearly caused a collision. Defendant quickly exited her Jeep, lifted her shirt to reveal the gun, and began hitting the victim. (V4-816) On the other side of the street, bystanders confirmed Defendant had fired a shot. (V4-825).

Shakonda Rosser testified that she was driving in the area of the incident when she saw a Jeep suddenly drive around traffic and block the victim's truck. (V4-866) The unusual maneuver caught her attention, so she slowed down. Rosser noted traffic was moderate at the time and she was within 10 yards of the incident. (V4-866, 876)

Rosser testified that after the Jeep blocked the truck, the truck tried to move forward, causing an impact. She observed smoke and oil leaking from the victim's truck following the collision. (V4-867) At that point, she saw a young woman exit the Jeep, walk toward the truck,

and begin punching the driver (victim) through the window. (V4-867) Rosser stopped her own vehicle and witnessed the woman—identified as the Defendant—yelling and striking the victim repeatedly. (V4-867)

Rosser couldn't hear what the Defendant was shouting but noted that she punched the victim in the chest area several times. (V4-868) The victim appeared confused and shocked, and he did not raise his hands or respond in any way, which struck Rosser as odd. (V4-868–869) Additionally, she did not see the victim move his mouth or speak during this violent encounter with Defendant. (V4-869)

After the initial assault, Defendant backed away, and Rosser observed a gun on her hip. Defendant then drew the gun and commanded the victim to exit the truck. (V4-869–870) When he did not comply with her demands, Defendant returned to the window and punched the victim again, before backing off a second time and once more holding him at gunpoint, still demanding that he get out of the vehicle. (V4-870)

The victim continued to remain unresponsive, so Defendant attempted to open the door, which was locked. She then reached through the window in an attempt to open it from the inside. (V4-870) About a minute later, Rosser heard a gunshot. At the time, the Defendant was positioned right next to the driver-side window with the gun inside the truck, held in her right hand. (V4-871)

A bystander attempted to approach the Defendant, but she turned around with the gun, prompting the bystander to raise his hands and retreat. (V4-872). Rosser testified that she never saw the victim's hands and that he made no aggressive moves—he simply sat still. (V4-872) She

emphasized that the Defendant appeared to be in a rage, yelling and repeatedly striking the victim. (V4-873).

After the shooting, Rosser observed the Defendant changing shirts from her trunk, speaking on the phone, and walking around the scene calmly. (V4-873–874) Rosser spoke with the police and provided a written statement, noting that others also witnessed the event. (V4-875–876).

Ashley Jackson also witnessed the Defendant aggressively weaving through traffic prior to the confrontation and yelling for the victim to get out of the car. She saw the Defendant pull out a gun and shoot the victim. (V6-1158–1160)

Cameron Williams, another eyewitness bystander, captured video of the incident. He testified that although he did not witness the initial collision, Williams observed the Defendant at the victim's driver-side door, yelling and banging on the truck window with a gun. (V5-967, 1007) Yet, he never saw the victim exit the truck, and he never saw a weapon in the victim's hands. (V5-980)

According to Defendant, the DOC Officer motioned for her to pursue the victim, which she did. (V6-1234–1235) Despite Defendant's claim that 911 never instructed her not to follow the victim, the transcript (State Ex. 40) contradicts this: the dispatcher repeatedly told her not to pursue. The Defendant acknowledged these warnings on the recording but continued anyway, later stating she was "not chasing" but "just getting the tag." (V6-1236, 1270–1274)

After obtaining the plate number, Defendant stated she wished for both vehicles to return to the accident scene, where the police were expected. She told 911 she would remain with the victim until the police arrived and that she felt "safe" doing so. (V6-1236–1237)

Defendant then approached the victim's vehicle with her phone in hand. According to the Defendant the victim knocked her phone away, grabbed her wrist, and pulled her into the car. (V6-1240) She stated that the gun was in a holster on her hip and was removed to defend herself. She further claimed that during the struggle the victim pulled the trigger, resulting in the fatal shooting. (V6-1246–1251)

During cross-examination, the Defendant admitted she did not speak with the victim at the original accident scene, never saw a weapon on him, and was not threatened by him prior to the shooting. (V6-1267–1268) She also acknowledged that she had heard and understood the dispatcher's repeated instructions not to pursue. (V6-1270–1274)

Further contradictions emerged regarding whether she caused the victim to stop. While she denied cutting the victim off, multiple eyewitnesses and physical evidence suggested otherwise. (V6-1276–1277) She also denied telling the victim to get out of the vehicle, despite 911 audio capturing her yelling that. (V6-1278, State Ex. 41)

In her recorded police interview, the Defendant eventually admitted that her finger was on the trigger at the time of the shooting. (V6-1285) She stated she was not pointing the firearm directly at the victim, but that it was "not pointed away," instead resting on the car window. (V6-1286–1287) Defendant conceded that the victim did not have anything in his hands. (V6-1286).

Ultimately, Defendant acknowledged the situation could have been avoided and admitted that she voluntarily placed herself into it. (V6-1287–1288) She claimed that her statement to the victim that she would shoot him was intended as a deterrent. (V6-1288)

Sgt. Richey, working uniform patrol on May 7, 2019, responded after being flagged down by a citizen who said a vehicle collision and shooting occurred near Riverdale Road and Forest

Parkway (V5-1072). Upon arrival, he saw a large crowd and two vehicles that had collided (V5-1073). Multiple witnesses pointed to the red truck, stating the man inside had been shot.

Richey asked who was responsible, and Defendant voluntarily stated that she had shot the man, handed over her firearm, driver's license, and Georgia concealed carry permit. (V5-1073) The victim was non-responsive, and Richey tried to determine where he had been shot. (V5-1074) He provided first aid until the paramedics arrived and noted that civilians were also assisting at the scene. (V5-1075) But the Defendant did not render any aid to the victim. (V5-1117).

Det. Hayward interviewed the Defendant and noted inconsistencies, including her claim that the victim grabbed the gun. Defendant later admitted she had her finger on the trigger and initiated the stop. (V7-1359–1372)

Cynthia Seguin – Forensic DNA Analyst used the TrueAllele DNA system to analyze data processed by Lavoie. (V5-1000) From the gun's slide, the DNA belonged to a major female contributor, identified as the Defendant. (V5-1001) Minor male and female contributors were also detected, but she could not conclusively determine whether the victim handled the firearm. (V5-1002)

Dr. Stacey Desamours, Medical Examiner – Cobb County conducted the autopsy. She found small bruises on the upper left chest near the collarbone, consistent with being punched. (V5-929) No defensive wounds were noted.

The victim sustained a single close-range gunshot wound to the abdomen, which caused massive internal bleeding and death. (V5-929–938) Stippling was present, indicating the gun was fired at close range (a few inches to 3 feet away). (V5-933)

Detective Hayward of the local police department testified as the State's rebuttal witness. He responded to the scene of the shooting and conducted an investigation, which included collecting physical evidence, photographing the scene, and interviewing the Defendant. (V7-1359) Hayward properly Mirandized the Defendant, using a written form which the Defendant signed after reviewing it. (V7-1360; State's Exhibit 38) During the subsequent interview, the Defendant made multiple notable statements and admissions.

At the time of the interview, Det. Hayward had not yet reviewed the 911 tapes, had not spoken to any witnesses, and had not viewed any body-worn camera footage. (V7-1368) Despite the incomplete evidentiary review, the Defendant admitted during the interview that:

- She told the victim to stay in the car (V7-1368), contradicting her statements caught on the 911 tape, where she is heard telling the victim to get out of the car. (V7-1369)
- She acknowledged that she stopped the victim. (V7-1369)
- She placed her finger on the trigger of the firearm. (V7-1369)
- She did ~~not see~~ any weapons in the victim's hands and did not express any concern during the interview that he was armed. (V7-1369–1370)

The State introduced Exhibit 15, a demonstration of the firearm used in the shooting, showing that it included a double safety mechanism. (V7-1371) For the firearm to be discharged, a person must simultaneously depress the back handle safety and pull the trigger. (V7-1371) This demonstration refuted the theory that the firearm could have been discharged accidentally or without deliberate pressure applied to both components.

Additionally, the Defendant claimed that she racked the slide of the gun during the encounter, an action which Det. Hayward confirmed requires the use of two hands. (V7-1372)

This further undermined the Defendant's version of events involving a spontaneous or purely defensive shooting during a struggle.

WRITTEN ENUMERMATION OF ERRORS

1. a. Trial-counsel did not render ineffective assistance.

To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984), adopted by Georgia courts in Reynolds v. State, 306 Ga. 630 (2019). Specifically, the defendant must show:

1. That counsel's performance was deficient, falling below an objective standard of reasonableness; and
2. That this deficient performance prejudiced the defense to the extent that there is a reasonable probability the outcome of the trial would have been different but for counsel's errors.

Failure to prove either prong is fatal to the claim.

Trial counsel did not render deficient performance for not requesting a jury instruction on citizen's arrest. Georgia law permits a private person to arrest another only under narrow circumstances. OCGA § 17-4-60 states:

“A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.

Here, the record is void of any evidence that the Defendant personally witnessed a crime being committed, or that she had immediate knowledge or probable cause to believe that a felony had occurred. While one witness described an officer interacting with a truck driver and an

individual (Mr. Herring) revving his vehicle and accelerating, that account fails to establish a sufficient legal foundation for a citizen's arrest.

The perception of danger arose after the vehicle had already taken off, not during any actual or attempted commission of a crime. The Defendant was not aware of any felonious act at the time of her intervention. Therefore, the defense of citizen's arrest lacked the factual predicate necessary to support a charge under OCGA § 17-4-60. Additionally, Georgia courts have made it clear that a valid citizen's arrest must occur immediately and without delay. (Harbuck v. State, 288 Ga. 768 (2011)).

In the case at bar, the evidence did not support the essential elements of a lawful citizen's arrest. There was no showing that the Defendant witnessed the commission of a crime or had immediate knowledge thereof, nor did the record establish probable cause to believe a felony had been committed. Georgia law is clear that the failure to request a jury instruction not supported by the evidence does not constitute deficient performance. (Reed v. State, 291 Ga. 10 (2012); Davis v. State, 285 Ga. 343 (2009).)

Tactical and strategic decisions do not constitute ineffective assistance unless no competent attorney would have made the same choice. (Head v. Ferrell, 274 Ga. 399 (2001); Rumph v. State, 307 Ga. 477 (2019)). Even assuming *arguendo* that counsel's performance was somehow deficient, Defendant has failed to show prejudice under Strickland. There is no reasonable probability that the outcome of the trial would have been different had a citizen's arrest instruction been given. Considering the lack of evidentiary support for the defense, the jury likely would have rejected it. Courts in Georgia have routinely declined to find prejudice where the omitted instruction was factually or legally unsupported. (Jones v. State, 283 Ga. 155 (2008); Hughes v. State, 269 Ga. App. 242 (2004)).

Because the record does not support a charge on citizen's arrest, and because counsel's decision not to request such an instruction was a reasonable and strategic one, the Defendant cannot satisfy either prong of Strickland. Accordingly, the claim of ineffective assistance fails.

b. The Trial Court Fully and Properly Instructed the Jury on All Applicable Legal Principles

The trial transcript demonstrates that the trial court thoroughly instructed the jury on all essential legal principles governing the determination of guilt, including:

- The indictment is not evidence (V7-1482);
- The Defendant is presumed innocent (V7-1482);
- The burden of proof rests solely with the State (V7-1482);
- The requirement of proof beyond a reasonable doubt (V7-1483);
- The insufficiency of bare suspicion (V7-1483);
- The roles of the judge and jury (V7-1484);
- The nature of direct and circumstantial evidence (V7-1484-85);
- Witness credibility, including impeachment, prior statements, expert testimony, and inconsistent statements (V7-1485-87);
- The legal standards governing the Defendant's statement, voluntariness, and constitutional rights (V7-1487-1490);
- All relevant substantive offenses: malice murder, felony murder, aggravated assault, false imprisonment, and firearm-related charges (V7-1493-1496);
- Justification, accident, criminal intent, and the limits of force, including "no duty to retreat" and "threats justifying homicide" (V7-1491-1498);

- And other procedural safeguards concerning jury deliberations, verdicts, and impartiality (V7-1499-1501).

Significantly, the Court charged on justification under OCGA § 16-3-20 (V7-1497), which is the appropriate and controlling legal theory that would subsume any argument based on citizen's arrest. Justification is an affirmative defense that includes the lawful use of force in defense of self, others, or property—and does not require a charge on citizen's arrest unless the facts specifically support that additional theory. (See, e.g., Manzano v. State, 282 Ga. 557 (2007)).

A justification charge covers the substance of a citizen's arrest defense. Where a defendant claims he acted lawfully in detaining or using force against another person, a jury instruction on justification under OCGA § 16-3-20 is the appropriate charge. Georgia courts have consistently held that: "A charge on justification is proper where the defendant contends that his actions were legally authorized and necessary to prevent a crime or injury." Manzano v. State, 282 Ga. 557, 559 (2007)

In Manzano, the Georgia Supreme Court rejected the need for a separate citizen's arrest instruction where the defendant claimed he was trying to lawfully detain someone committing a crime. The Court held that the trial court's charge on justification was sufficient and appropriate.

Similarly, in Durden v. State, 327 Ga. App. 173, 179 (2014), the Court held, "[a]lthough the defendant requested a charge on citizen's arrest, the trial court properly charged justification, which covered the substance of his defense. A trial court is not required to give redundant instructions."

The Court of Appeals in Lang v. State, 344 Ga. App. 623, 627 (2018), reiterated that, "[a] citizen's arrest defense is not required when a justification charge sufficiently encompasses the defendant's theory of the case."

Thus, the justification instruction given by the trial court (V7-1497) appropriately covered the legal grounds for the Defendant's conduct. There was no basis in law or fact requiring a separate charge on citizen's arrest, and doing so may have confused or misled the jury.

Because the evidence did not support a separate charge on citizen's arrest, and the justification charge already covered the legal defense raised, the trial court did not err—plainly or otherwise. See State v. Kelly, 290 Ga. 29, 33 (2011) (plain error requires a clear legal mistake that affects substantial rights and the fairness of proceedings).

In light of the comprehensive jury instructions provided—including those on justification, criminal intent, and the burden of proof—there was no omission that rises to the level of plain error. The evidence at trial did not support a separate charge on citizen's arrest, and the charge on justification fully addressed any theory by which Defendant may have believed her actions were legally authorized. As such, the trial court properly fulfilled its obligations, and the Defendant's rights were fully protected.

2. (a) Trial Counsel was not ineffective for not arguing that the victim fled the scene because he possessed an illegal substance.

Trial counsel was not ineffective under the standards of Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a defendant claiming ineffective assistance must demonstrate: (1) that counsel's performance was deficient; and (2) that the deficiency prejudiced the defense. Failure to raise a speculative or unproven defense does not constitute ineffective assistance. See Chapman v. State, 273 Ga. 348 (2001).

While the record reflects that a white substance contained in baggies was found in the victim's vehicle, the substance was never tested or confirmed to be illegal drugs. Trial counsel

cannot be faulted for declining to argue a theory that lacked evidentiary support and risked being excluded or discredited under OCGA § 24-4-401 and § 24-4-403.

Georgia courts have consistently held that strategic decisions not to present speculative evidence do not amount to ineffective assistance. See Black v. State, 264 Ga. 550 (1994); Head v. Carr, 273 Ga. 613 (2001). Even if trial counsel had advanced the theory that the victim fled to avoid drug possession charges, it would not have affected the outcome. Possession of a suspected but unconfirmed substance does not constitute a forcible felony under OCGA § 17-4-20.

As such, it would not justify a citizen's arrest or the use of deadly force under OCGA § 16-3-21. At the ~~time~~ of the incident, the Defendant had no knowledge that the victim had baggies containing a white powdery substance in his vehicle. Furthermore, the Defendant had no verified knowledge that the substance was illegal. Thus, any argument that the victim's conduct justified lethal force remained unsupported by Georgia law.

Trial counsel pursued a justification defense based on the Defendant's perception of imminent threat. This strategy focused the jury on legally relevant issues and avoided speculative claims. Such strategic choices are entitled to deference. Strickland, 466 U.S. at 689.

Thus, trial counsel was not ineffective for not asserting that the victim fled due to illegal drug possession. The theory lacked evidentiary support, would not have altered the justification analysis, and was reasonably excluded as part of sound trial strategy.

(b) The medical examiner's testimony was not hearsay.

Pursuant OCGA § 24-3-311, hearsay is defined as an out-of-court statement offered to prove the truth of the matter asserted. However, experts are allowed to rely on hearsay information if it forms part of their independent analysis. Georgia caselaw recognizes that when a medical examiner testifies about a decedent's medical history—such as a history of

hypertension and diabetes—the testimony is not automatically excluded as hearsay if the expert uses the reported information as background to form his own diagnostic opinion. The expert’s opinion is based on his own observations, testing, and experience, rather than merely reiterating someone else’s statement.

Dr. Stacey Desamours testified as the medical examiner, he noted that he was “told” the victim had a history of hypertension and diabetes. (V5-930) Dr. Desamours used that reported history as contextual background to guide his autopsy procedures and testing, (e.g., checking blood sugar levels) rather than as the sole basis to prove the conditions. (V5-930-933)

Since his conclusions were primarily derived from his direct observations and test results—integrating the reported history into his independent evaluation—the testimony is generally not treated as inadmissible hearsay. The record shows that by incorporating the reported medical history within his overall expert opinion on the cause of death (homicide by gunshot wound), the testimony was admissible under hearsay exceptions and did not merely repeat out-of-court statements.

(c) The failure to preserve evidence of baggies of suspected cocaine/methamphetamine does not justify the Defendant's use of deadly force.

A justification (self-defense) claim requires proof that:

1. The defendant reasonably believed force was necessary to prevent imminent death or great bodily harm to herself or others (OCGA § 16-3-21), and
2. The use of force was proportional and in response to an actual or perceived threat.

Assuming the victim was in possession of suspected narcotics, and that law enforcement failed to preserve them, this still would not provide legal justification for the shooting. Mere possession of drugs does not equate to an imminent threat of harm or death.

Furthermore, the loss of potential evidence (e.g., baggies) might be relevant to a spoliation argument or to challenge the thoroughness of the investigation. However, it does not affect the legal standard for justification unless Defendant reasonably believed the victim was armed, threatening, or behaving in a manner that posed immediate danger.

Defendant admitted the victim never exited his vehicle, never displayed a weapon, and did not make threatening gestures before the shooting. In fact, the Defendant testified that she was not threatened by the victim. Defendant also acknowledged that she placed herself into the situation. (V6-1267–1288). Even if the baggies had been preserved and confirmed to contain narcotics, that fact would not support the use of deadly force, absent an actual, imminent threat.

The failure to preserve the baggies of suspected drugs does not justify the Defendant's use of deadly force. Possession of drugs—whether proven or not—is legally irrelevant to a claim of self-defense unless directly tied to an imminent threat of harm, which was not supported by the overwhelming evidence in this case. Therefore, Defendant's claim fails.

(d) Defendant's testimony was not credible.

During cross-examination, the Defendant admitted she never spoke with the victim at the scene, never saw a weapon on him, and was not threatened by him prior to the shooting. (V6-1267–1268) She also acknowledged hearing and understanding the dispatch's repeated instructions not to pursue the victim. (V6-1270–1274)

Although the Defendant denied causing the victim to stop or ordering him out of his vehicle, multiple eyewitnesses and physical evidence contradicted her, and 911 audio captured her yelling for him to exit the vehicle. (V6-1276–1278, State Ex. 41)

In her police interview, the Defendant eventually admitted that her finger was on the trigger at the time of the shooting and that the firearm was not explicitly pointed at the victim, but rather resting on the car window. She also conceded that the victim did not have anything in his hands. (V6-1285–1287)

Moreover, the Defendant acknowledged that she voluntarily placed herself in the situation, noting that the incident could have been avoided, and claimed her statement to the victim—that she would shoot him—was intended merely as a deterrent. (V6-1287–1288) The Defendant concluded that the shooting occurred because the victim tried to take her gun; otherwise, she would not have drawn the weapon. (V6-1290–1296)

Yet, the record revealed multiple inconsistencies in the Defendant’s account, notably regarding her pursuit, the nature of her engagement with the victim, and the circumstances leading up to the shooting—all of which significantly undermined her claim of self-defense.

3. Trial counsel did not provide ineffective assistance for failure to call witnesses at trial.

Under the Strickland test no reasonable probability existed that, but for the attorney’s errors, the result would have been different. The Court in Bryant v. State, 268 Ga. App. 362 (2004) emphasized that the defendant must make an affirmative showing that the witness would have testified, and that the testimony would have made a difference. That did not occur in the instant case.

While the Defendant alleged that these witnesses were critical, the record is

void of any evidence of the identities of the witnesses and that these phantom witnesses were subpoenaed. Further, Defendant Courts are hesitant to fault attorneys for not presenting phantom witnesses—especially if there's no proof they would've testified favorably. In fact, other than trial counsel, Defendant did not present any other witnesses at the hearing.

In United States v. Valenzuela-Bernal (1982), the Supreme Court held that you must show the missing witness's testimony would have been material and favorable. So just saying someone didn't show up isn't enough. You must show who they were, why they mattered, and how counsel's inaction hurt the case, which did not occur here.

4. Trial Court did not err in granting the State's motion to exclude.

On May 11, 2020, the State filed a motion to exclude Hayward's potential drug use and subsequent termination from the police department that was granted. (V7-1356-1357) Based upon the overwhelming evidence of guilt from eyewitnesses and forensic evidence, the exclusion of such evidence did not prejudice the outcome of the case.

The record illustrates that the State presented multiple eyewitnesses, including:

- **Terry Robinson**, witnessed the initial collision whereby the victim appeared dazed and confused, victim's physical appearance suggested he was experiencing a medical emergency, he was on the phone with 911 and testified to the Defendant's pursuit of the victim. (V3-710-713,748)
- **Ashley Jackson**, a bystander who took a video showing the Defendant confront the victim, pull out a gun and shoot the victim. (V6-1158-1160)
- **Shakonda Rosser**, another eyewitness observed the Defendant block the victim's truck, jump out of her vehicle and walk over to the victim's vehicle, yelling and repeatedly punching the victim through the window. (V4-866-873)

- **Teanna McCranny**, observed the Defendant block the victim's truck path, forcing it to brake abruptly, jump out of her Jeep and aggressively demand that the victim exit his truck, and repeatedly cursing at the victim while pointing a gun at him. (V4-800-816)
- **Cameron Williams** also captured on video the confrontation, whereby he observed Defendant at the victim's driver side door, yelling and banging on the window with a gun. (V5-967, 1007)
- **Sgt. Richey** initially responded to the shooting incident, and asked who shot the victim, and the Defendant voluntarily admitted that she shot the victim. (V5-1073)

Thus, Hayward's testimony was cumulative of more direct eyewitnesses and documentary evidence. Hayward was used in rebuttal, not the State's case-in-chief. His primary role was: (1) to testify about the Defendant's custodial interview, and (2) confirm what the Defendant said about stopping the victim, touching the gun, and placing her finger on the trigger.

The evidence was sufficient to convict Defendant based on her own statements, bodycam video, and eyewitnesses accounts, independently of Hayward's testimony. Although cross-examination of Hayward's drug use and termination was barred, trial counsel conducted a full cross-examination regarding:

- The details of his interview with the Defendant,
- Whether he reviewed other evidence before interviewing her,
- Gaps or weaknesses in the investigation, including what he knew at the time.

Therefore, trial counsel was not blocked from challenging Hayward's testimony.

In addition, the jury was properly instructed on credibility and burden of proof. The Court gave full instructions on:

- The presumption of innocence,

- The burden of proof,
- How the jury must evaluate witness credibility, and
- That the jury must base its decision only on the evidence admitted.

Hence, the jury had proper tools to assess credibility, and that the exclusion of certain impeachment evidence did not mislead or unduly restrict their deliberation.

The evidence against the Defendant was overwhelming:

- Hayward’s role was supportive but not central,
- The impeachment material was marginally relevant, and
- The jury’s verdict was supported by multiple, independent lines of evidence.

Even assuming the exclusion was a constitutional error, it was harmless beyond a reasonable doubt.

5. (a) Trial Court did not err for not charging on the defense of others.

The record reflects that the Defendant observed an interaction between the state officer and the truck driver of the semi tractor, during which the officer appeared to be directing the truck driver to stand aside. However, this testimony did not establish that a crime was committed in the Defendant’s presence, nor did it provide the necessary foundation to support a lawful citizen’s arrest under OCGA § 17-4-60.

While the witness described the driver (Mr. Herring) “revving” the vehicle and “just kind of took off,” there was no indication in the record that the Defendant had immediate knowledge that a felony had occurred, or that she had probable cause to believe a felony had just been committed. At most, the testimony reflects confusion or alarm—but not the legal certainty required to justify a private arrest.

Moreover, the witness stated that concerns about potential danger did not arise until after the vehicle had ~~already~~ taken off. This supports the conclusion that any pursuit or intervention by the Defendant occurred after the alleged event, further undermining any argument that a lawful citizen's arrest was being conducted contemporaneously.

As such, the factual record fails to support a viable claim that Defendant's conduct was part of a lawful citizen's arrest. Thus, the trial court did not err for not giving a jury instruction on this issue, and the Defendant was not prejudiced thereby.

(b) Trial counsel did not render ineffective assistance for not requesting a charge on the defense of others.

The record and controlling law demonstrate that the omitted charge was not supported by the evidence and that counsel's decision was a reasonable strategic choice. As stated, under Strickland, 466 U.S. 668 (1984), and adopted by Georgia courts in Reynolds, 306 Ga. 630 (2019), a defendant claiming ineffective assistance must establish both (1) that trial counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Failure to satisfy either prong is fatal to the claim. Strategic decisions, even if ultimately unsuccessful, are entitled to strong deference. (Head v. Ferrell, 274 Ga. 399 (2001); Rumph v. State, 307 Ga. 477 (2019).)

Georgia law permits a private person to arrest another only under narrow circumstances. OCGA § 17-4-60 states:

“A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or

attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion.”

Here, the trial record contains no evidence that the Defendant personally witnessed a crime being committed, or that she had immediate knowledge or probable cause to believe that a felony had occurred. Defendant’s perception of danger arose after the vehicle had already taken off, not during any actual or attempted commission of a crime. Defendant was not aware of any felonious act at the time of her intervention.

Therefore, the defense of citizen’s arrest lacked the factual predicate necessary to support a charge under OCGA § 17-4-60. Georgia law is clear that the failure to request a jury instruction not supported by the evidence does not constitute deficient performance. Reed v. State, 291 Ga. 10 (2012); Davis v. State, 285 Ga. 343 (2009).

ORAL ENUMERATION OF ERRORS ARGUED AT THE HEARING

Ineffective assistance of counsel.

At the hearing, Defendant’s sole argument was that trial counsel performed deficiently by failing to request jury instructions on citizen’s arrest and defense of others. Trial counsel, however, testified that the evidence presented at trial did not support either charge. He explained that there was no “nexus” between Defendant and the other individuals involved in the incident that would warrant such instructions.

The evidence at trial confirmed counsel’s assessment. A charge on citizen’s arrest under OCGA § 17-4-60 was not authorized because there was no evidence that Defendant acted upon her immediate knowledge of the commission of a crime

or that her conduct occurred in the course of a lawful arrest. Similarly, a charge on defense of others under OCGA § 16-3-21 was unwarranted, as the record contained no evidence that Defendant reasonably believed the use of force was necessary to protect another from the imminent use of unlawful force.

Because neither instruction was supported by the evidence, trial counsel's strategic decision not to request them was objectively reasonable. See Mahan v. State, 282 Ga. App. 201, 204 (2006). Counsel is not ineffective for declining to pursue a meritless or inapplicable defense. Moreover, the absence of such unsupported charges did not affect the outcome of the trial. See Strickland v. Washington, 466 U.S. 668 (1984). Also, defendant bears the burden of proving both deficient performance and prejudice under Strickland. Neither burden is met here.

Jury charges must be adjusted to the evidence, and counsel is not ineffective for declining to request an instruction unsupported by the record. Further, "hindsight has no place in an assessment of the performance of trial counsel." Clark v. State, 315 Ga. 1, 4 (2022). "The fact that defendant and his present counsel disagree with the decision made by trial counsel does not require a finding that defendant's original representation was inadequate." Mahan v. State, 282 Ga. App. 201, 204 (2006).

Moreover, "[t]rial counsel's decisions relating to strategy and tactics are not judged by hindsight." Jones v. State, 296 Ga. 561, 567 (769 SE2d 307) (2015).

Trial strategy is judged "from counsel's perspective at the time of trial and under the particular circumstances of the case." Butler v. State, 313 Ga. 675, 683, 872

S.E.2d 722, 731 (2022). The decision whether to pursue a defense theory or request a specific jury charge is “a question of trial strategy” that will not be second-guessed unless it is “so patently unreasonable that no competent attorney would have chosen it.” Smith v. State, 314 Ga. App. 583, 588 (2012).

Even assuming arguendo that counsel should have requested the charge, Defendant failed to demonstrate prejudice. “[T]his Court has declined to presume prejudice in the context of an ineffective assistance of counsel claim based on attorney performance.” Bradley v. State, 318 Ga. 142, 144 (2024). The absence of a citizen’s arrest instruction did not undermine confidence in the outcome, particularly where the State’s evidence established that Defendant’s actions were unrelated to any lawful arrest.

Citizen’s Arrest

The legal standards for a citizen's arrest are primarily governed by OCGA § 17-4-60. A private citizen may arrest an offender if the offense is committed in their presence or within their immediate knowledge. The terms "in his presence" and "within his immediate knowledge" are synonymous, meaning that a crime is considered to be committed in a citizen's presence if they acquire knowledge of its commission through the exercise of any of their senses. Johnson v. Jackson, 140 Ga. App. 252 (1976), Merneigh v. State, 242 Ga. App. 735 (2000). For misdemeanors, the offense must occur in the citizen's presence or immediate knowledge, while for felonies, a citizen may also arrest upon reasonable and probable grounds of suspicion if the offender is escaping or attempting to escape. Johnson v. Jackson,

140 Ga. App. 252, Delegal v. State, 109 Ga. 518, 521 (1900), Prayor v. State, 217 Ga. App. 56 (1995).

"... Ga. Code Ann. § 17-4-60 provides that a private citizen may make an arrest if a felony is committed in his presence or within his immediate knowledge. A private citizen may make an arrest upon reasonable and probable grounds of suspicion if the offense is a felony and the offender is escaping or trying to escape.

However, for a citizen's arrest to be valid, the citizen must use no more force than is reasonable under the circumstances. Deadly force in effecting an arrest is limited to self-defense or to a situation in which it is necessary to prevent a forcible felony. ..."Prayor v. State, 217 Ga. App. 56, 58.

A citizen's arrest must be conducted using no more force than is reasonable under the circumstances. The use of excessive force invalidates the arrest and may result in criminal charges against the individual making the arrest. For instance, if deadly force is used, it is only justified in self-defense or to prevent the commission of a forcible felony. Otherwise, the use of such force may lead to charges such as assault, battery, or even homicide, depending on the degree of force used and the resulting harm. Prayor v. State, 217 Ga. App. 56, Hayes v. State, 261 Ga. 439 (1991).

The use of force during a citizen's arrest is limited to what is reasonably necessary under the circumstances. Deadly force is only permissible in self-defense or to prevent the commission of a forcible felony, as outlined in OCGA § 16-3-21. Specifically, deadly force is justified if the individual reasonably believes it is

necessary to prevent death or great bodily injury to themselves or a third person, or to prevent a forcible felony. Prayor v. State, 217 Ga. App. 56, OCGA § 16-3-21, Chambers v. State, 308 Ga. App. 748. Excessive or unlawful force, even when acting in self-defense, is not justifiable. Reddick v. State, 321 Ga. 73 (2025). In Patel v. State, 279 Ga. 750, the Court emphasized that the use of unreasonable force could not be part of a legitimate citizen's arrest, and such actions may lead to criminal liability.

In the case at bar, Defendant cannot establish deficient performance or prejudice regarding trial counsel's decision not to request a jury charge on citizen's arrest under OCGA § 17-4-60. The statute authorizes a private person to arrest an offender only "if the offense is committed in his presence or within his immediate knowledge," and in the case of a felony, "upon reasonable and probable grounds of suspicion." The evidence at trial did not show that Defendant personally observed, or had immediate knowledge of, the commission of a crime that would justify initiating a citizen's arrest.

A citizen's arrest charge is not warranted unless there is *some evidence* to support each statutory element. See Nelson v. State, 283 Ga. 119, 121 (2008) (no citizen's arrest instruction required where defendant did not personally witness the crime). Moreover, the use of deadly force in effectuating a citizen's arrest must be reasonable and necessary under the circumstances. See OCGA § 17-4-20(b); Davis v. State, 269 Ga. 276, 277 (1998).

In the instant case, the evidence established that Defendant's use of deadly force was not reasonable, not necessary, and not tied to any lawful arrest attempt but arose from a personal confrontation. In fact, the evidence showed that the Defendant was the aggressor. Thus, trial counsel was not deficient for failing to request an unsupported instruction. See Hamm v. State, 294 Ga. 791, 795 (2014) (no ineffective assistance for failing to request a charge not adjusted to the evidence).

Defense of Others

A person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent great bodily harm to himself or herself or a third person or to prevent the commission of a forcible felony. OCGA § 16-3-21(a). A homicide is not justified if the force used by the defendant exceeds that which a reasonable person would believe was necessary to defend against the victim's unlawful act.

In addition, a jury charge for citizen's arrest is not required when the defendant was the initial aggressor in the situation. A citizen's arrest under OCGA § 17-4-60 requires that the arresting individual use no more force than is reasonable under the circumstances, and deadly force is limited to self-defense or preventing a forcible felony Prayor v. State, 217 Ga. App. 56, Hayes v. State, 261 Ga. 439. Additionally, the use of force is not justified if the individual was the initial aggressor, unless they withdraw from the encounter and effectively communicate their intent to do so, and the other party continues or threatens to continue the use

of unlawful force OCGA § 16-3-21, Wainwright v. State, 305 Ga. 63 (2019), Powers v. State, 297 Ga. 345 (2015).

The Court held in Patel v. State, 279 Ga. 50, that a jury charge on citizen's arrest was not warranted because there was no evidence that the defendant was attempting to effectuate an arrest, and the defendant used more force than was reasonable under the circumstances. Similarly, in Wainwright v. State, 305 Ga. 63, the Court determined that a defendant is not entitled to a jury instruction on justification, including in the context of a citizen's arrest, when the evidence shows that the defendant was the aggressor.

Furthermore, a jury charge on a defendant's sole defense, such as citizen's arrest, is only required if there is some evidence to support the charge. Even slight evidence is sufficient to warrant such a charge, *but there must be a legitimate basis for the defense*. (Emphasis added) Tarvestad v. State, 261 Ga. 605, Virgil v. State, 227 Ga. App. 96. If the defendant's actions, as the initial aggressor, do not align with the requirements of a lawful citizen's arrest, a charge on this defense is not justified.

A citizen who uses excessive force loses the protection of the citizen's arrest statute. This means that the arrest is no longer considered lawful, and the individual cannot rely on the statute as a defense against criminal or civil claims. Prayor v. State, 217 Ga. App. 56, Patel v. State, 279 Ga. 750. The Court reiterated in Prayor that deadly force in effecting an arrest is limited to self-defense or

preventing a forcible felony, and any use of force beyond what is reasonable invalidates the arrest. Prayor v. State, 217 Ga. App. 56.

In the case at bar, there was no forcible felony being committed, and Defendant was the initial aggressor. Despite repeated instructions from the 911 operator not to pursue, she chose to chase and block Mr. Herring's vehicle, driving recklessly through traffic. Eyewitnesses testified that Defendant exited her vehicle armed, confronted Mr. Herring, demanded he exit his car, cursed at him, and threatened to shoot him if he failed to conform with her demands. When Mr. Herring did not comply, she lunged through his driver's window and repeatedly punched him—injuries corroborated by the medical examiner's findings of chest bruising. All eyewitnesses confirmed that Mr. Herring was unarmed, held nothing in his hands, and did not defend himself. When her physical assault failed to force compliance, the Defendant escalated to deadly force, unholstering her firearm and fatally shooting Mr. Herring who was unarmed.

A lawful citizen's arrest requires that a felony be committed in the citizen's immediate presence or within their direct knowledge, that only reasonable force be used, and that statutory procedures for handling the arrestee be followed. Deadly force is strictly limited to lawful self-defense or prevention of a forcible felony, and its use is always subject to judicial scrutiny and jury determination. Johnson v. Jackson, 140 Ga. App. 252; Merneigh v. State, 242 Ga. App. 735; Prayor v. State, 217 Ga. App. 56; OCGA § 16-3-21.

The law is clear that excessive force in attempting a citizen's arrest exposes the actor to criminal and civil liability, including charges for assault, battery, homicide, and false imprisonment. The individual making the arrest bears the burden of proving that their actions were lawful and reasonable under the circumstances; failure to meet this standard strips them of statutory protections. Further, when a defendant is the initial aggressor and the evidence does not support the statutory elements of a lawful citizen's arrest, the trial court is not required to instruct the jury on citizen's arrest. Wainwright v. State, 305 Ga. 63; Patel v. State, 279 Ga. 750; Virgil v. State, 227 Ga. App. 96.

The trial court broad discretion to sit as a “thirteenth juror.”

Under OCGA § 5-5-20, a trial court is permitted to grant a new trial in any case where the verdict of the jury is found contrary to evidence and principles of justice and equity. Pursuant to OCGA § 5-5-21, this Court is authorized to award a new trial where the verdict may be decidedly and strongly against the weight of the evidence.

These statutes known as general grounds, afford the Court broad discretion to sit as a “thirteenth juror” and weigh the evidence on a motion for new trial alleging these general grounds. Montgomery v. State, 315 Ga. 467, 473 (2023), Walker v. State, 292 Ga. 262, 264 (2013). This “discretion is not boundless; it ‘should be exercised with caution and invoked only’ when ‘the evidence preponderates heavily against the verdict.’” State v. Denson, 306 Ga. 795, 798 (2019) (quoting State v. Hamilton, 306 Ga. 678, 684 (2019)). “The grant or denial of a motion for new trial is a matter within the sound discretion of the trial court and will not be disturbed if there is any evidence to authorize it.” Hargrave v. State, 311 Ga. App. 852, 855 (2011) (quoting Taylor v. State, 259 Ga. App. 457, 460 (2003)).

The facts, as set forth herein, support the verdict by the jurors in this case. Accordingly, having considered the record, this Court declines to exercise its discretion to sit as a thirteenth juror in the matter and reverse Defendant's convictions. Further, this Court finds the trier of fact's findings were not contrary to the law, to the evidence, and neither against the weight of the evidence. This Court further finds there are no other grounds to grant a new trial.

The evidence was not insufficient to support Defendant's convictions beyond a reasonable doubt.

In Defendant's initial motion for new trial, she raises several general claims regarding the sufficiency of the evidence. Specifically, that the evidence was insufficient to authorize her convictions; the verdict is contrary to the evidence and the principles of justice and equity; the verdict is strongly against the weight of the evidence. A review of the record clearly demonstrates there was sufficient evidence to allow a jury to find Defendant guilty beyond a reasonable doubt on all charges for which she stands convicted.

The standard for reviewing the sufficiency of evidence is whether the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was guilty of the charged offenses. Jackson v. Virginia, 443 U.S. 307 (1979). In determining evidentiary sufficiency, the evidence is viewed in the light most favorable to the verdict, and the court will not weigh the evidence or determine witness credibility. Caldwell v. State, 263 Ga. 560, 436 S.E.2d 488 (1993); see also Vega v. State, 285 Ga. 32, 673 S.E.2d 223 (2009) (holding it is "for the jury to determine the credibility of the witnesses and to resolve any conflicts or inconsistencies in the evidence"). If there is some competent evidence, even though contradicted, to support each fact necessary to make out the State's case, the jury's verdict will be upheld. Santiago v. State, 314 Ga. App. 623, 623, 724 S.E.2d 793, 794 (2012).

Moreover “[t]he testimony of a single witness is generally sufficient to establish a fact.” OCGA § 24-4-8. Whether a witness is credible and whether his testimony should be accepted are questions for a jury. See Goldsby v. State, 273 Ga. App. 523 (2005). The sufficiency of the evidence, including any conflicts in the evidence, the credibility of the witnesses, and the weight of the evidence, supports the verdict and the verdict does not offend the principles of justice and/or equity. Choisnet v. State, 292 Ga. 860, 861 (742 S.E.2d 476) (2013).

The evidence admitted at trial, including all lay witness testimony, expert testimony, and exhibits, was sufficient for a rational trier of fact to find the Defendant guilty of all charges, beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979). Reviewing courts do not reweigh evidence or resolve conflicts in testimony; instead, evidence is reviewed in the light most favorable to the verdict, with deference to the jury’s assessment of the weight and credibility of the evidence. Smiley v. State, 300 Ga. 582, 583 (1) (2017) (quoting Mickens v. State, 277 Ga. 627, 627-628 (2004)).

Viewed in the light most favorable to the verdicts, the evidence showed that Defendant was the clear aggressor. She weaved recklessly through traffic, chased down the victim’s vehicle, and cut him off to block his path. Defendant then jumped out of her car, approached the victim with her gun secured in her holster, and began cursing at him, demanding that he get out of his vehicle. When the victim did not obey, Defendant escalated the confrontation. She leaned into the car and struck the victim repeatedly in the chest. Moments later, Defendant drew her weapon and fired, fatally shooting the victim.

Accordingly, the evidence in the instant case demonstrates not a lawful citizen's arrest but rather an unlawful assault culminating in homicide, foreclosing any entitlement to a citizen's arrest instruction.

Based on the aforementioned, the Defendant's motion for new trial as amended is DENIED.

This _____ day of _____, 2025.

JUDGE JEWEL C. SCOTT
Superior Court Clayton County

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