In the Supreme Court of the State of Georgia

KELVIN GILLIAM, *Appellant*,	)	Case S21A0941
versus	)	On appeal from the Superior Court of
STATE OF GEORGIA, *Appellee*.	)	Fulton County, Case 04SC23704.

BRIEF OF APPELLEE
(The District Attorney)

Hon. FANI T. WILLIS 223955
District Attorney of Fulton County

LYNDSEY RUDDER 421055
Deputy District Attorney

KEVIN ARMSTRONG 987456
Chief Senior Assistant District Attorney

Office of the District Attorney
136 Pryor Street SW, Third Floor
Atlanta, GA 30303
Tel. (404) 612-4951 / *Fax* (404) 893-2769
kevin.armstrong@fultoncountyga.gov

SUMMARY OF ARGUMENT

(I) The evidence was sufficient to show that Appellant KELVIN GILLIAM was an active party to the crime to six aggravated assaults.

(II) Gilliam has not shown a speedy-appeal violation because he has not shown the fourth factor of a speedy appeal claim: prejudice. Contrary to Gilliam's prejudice argument, he is not entitled to the benefit of case law this Court has overturned, and his assertions that his conviction would have been overturned had his case moved faster is speculative.

(III) The trial prosecutor's question, and an officer's answer, which established that Gilliam's codefendant Frederick Terrell did not give a statement did not violate the rule of Mallory v. State, 261 Ga. 625 (5) (409 SE2d 839) (1991), or Gilliam's constitutional rights. The superior court correctly determined the question and answer was not a comment on an invocation of the right to silence. Further, Mallory applies to pre-arrest silence and thus is inapplicable here; alternatively, Mallory should be overruled. Gilliam also could not have been harmed given the alleged comment did not apply to him, given the strength of the evidence against him, and given that one question and answer was isolated and not highlighted by the prosecution.

(IV) The superior court did not abuse its discretion in denying motions for mistrial as to the question and answer described above or as to a witness's statement that the victim had taken a nap because she had recently become pregnant.

(V) The superior court did not err in failing to grant Gilliam's motion to sever as there was not a basis for such a motion. Gilliam's defense was not antagonistic to his codefendants' and even assuming it was such would not be a basis for reversal.

(VI) By failing to cite authority in support of his claim, Gilliam has abandoned his argument that the superior court erred in preventing Gilliam from introducing prior convictions of Terrell to show Terrell's propensity. Moreover, such evidence was not admissible for that purpose.

(VII) Gilliam has not shown cumulative error prejudice.

Part 1: GENERAL INFORMATION

COMPANION CASE NOTICE

Appellant KELVIN GILLIAM was tried along with codefendant FREDERICK TERRELL. This Honorable Court docketed both Gilliam's and Terrell's appeals from this case on the same day. Terrell's case is S21A0942.

JURISDICTION

Frederick Terrell's appeal is properly before this Court as an appeal of a conviction for murder. The only basis upon which Appellant Gilliam asserts that his appeal might be considered properly before the Court is as a companion case to Terrell's appeal for judicial economy. The State takes no position on jurisdiction but notes that, in the court below, Gilliam simply made a blanket adoption of Terrell's amended motion for new trial and, except for sufficiency, each of his claims here either largely or entirely mirrors one of Terrell's claims.

A NOTE ON CITATIONS

Citations to the record and transcripts are marked "V" followed by the appropriate Volume number using this Court's Volume numbers for the record and transcripts, followed by the appropriate page number(s). Citations to trial use the original trial transcripts' pagination. Due to a scanning error which occurred at the superior court level, the original trial transcript's pagination and this Court's pagination begin to diverge in Volume 5.

PROCEDURAL HISTORY

Charges. Following two shooting incidents on September 05, 2004, the State obtained an indictment charging Appellant KELVIN GILLIAM—along with codefendants FREDERICK TERRELL, DWIGHT PARKS, and MICHAEL STINCHCOMB—with counts of murder, felony murder, aggravated assault (thirteen counts), and possession of a firearm during the commission of a felony. V1 4-12.[1]

Trial and Sentence. The case went to trial in April 2005. During the course of that trial, the superior court directed verdicts of acquittal as to the three charges of aggravated assault and dead-docketed another. V2 353-354 (marking original indictment with "DV" and "DD" next to applicable counts). At the conclusion of the trial the jury convicted Gilliam of six counts of aggravated assault. V2 389. It acquitted Gilliam of the remaining charges, including murder. Id. The six aggravated assaults for which Gilliam stands convicted include those against: DIAMOND ROSS; GEMIKA ROSS; MICHAEL MITCHELL; KERETESHA HINES; UNITA HINES; and LISA JOHNSON. Compare V10 2234-2237 (charge of the court identifying charges as renumbered) with V2 389 (verdict). The superior court (Lane, J.) then imposed upon Gilliam a total sentence of imprisonment for twelve years. V2 398-403; V10 2455-2456 (sentencing transcript).

Transcripts. The nine-volume transcript of trial was filed on August 01, 2005. Gilliam's sentencing transcript was filed on January 22, 2008.

---

[1] The indictment also charged Terrell with possession of a firearm by a convicted felon and Stinchcomb with an additional count of aggravated assault.

Motion for New Trial, Part 1. Gilliam filed a timely motion for new trial. V2 404-405.

Representation. Attorney CHUCK ROOKS represented Gilliam at trial. After trial, in June 2005, the superior court issued an order appointing the Conflict Defender's Office to Gilliam's case. V2 406. In February 2008, the superior court issued an order appointing the Public Defender's Office to Gilliam's case. V2 450. Then, in November 2008, the superior court appointed Gilliam's current counsel, Mr. JOHN KRAUS. V2 458. Mr. Kraus has represented Gilliam for twelve and one-half years.

Other Developments. In November 2018, the undersigned entered his appearance in the case and moved for a status conference. V2 476-477, 471-475. The superior court (Newkirk, J.) held a status conference on March 14, 2019, and issued an order the same day setting filing deadlines. V2 478. However, on March 28, 2019, the chief judge of the superior court issued an administrative order which transferred the case to another judge.

On May 21, 2019, the superior court (Glanville, J.) held a status hearing at which Mr. Kraus asserted he could neither go forward nor agree to withdraw, given his lack of communication from Gilliam. See V12 2461-2463. The superior court set a due date for Gilliam's appearance for the purposes of the State's then-anticipated motion to dismiss, V12 2463-2464, which the State filed later that same day, V2 479-484, and the superior court filed an order to that effect, V2 485. Mr. Kraus then filed a motion opposing the State's motion to dismiss, a motion to dismiss the

conviction based on a speedy appeals violation, an amended motion for new trial which asserted no new specific ground but asserted a blanket adoption of anything raised by his codefendants, and a motion for funds to hire an investigator to find Gilliam. V2 486-497. At a June 14, 2019 hearing, the superior court denied the State's motion to dismiss at Mr. Kraus's request and granted Mr. Kraus's motion for funds with which to finds Gilliam. V2 498-499.

Motion for New Trial, Part 2. The State timely responded to Gilliam's adoption of Terrell's amended motion for new trial. V2 500-533. The superior court convened an evidentiary hearing on August 23, 2019. See V12 2466. The superior court then issued an order denying Gilliam's motion for new trial. V2 534-539. Gilliam timely appealed to this Court on November 21, 2019. V1 1-3. The Clerk transmitted the record on March 25, 2021. This Honorable Court docketed the case on April 08, 2021. Gilliam filed the brief of appellant on May 10, 2021. This brief of appellee now timely follows.

STATEMENT OF RELEVANT FACTS

All of the following events took place on September 05, 2004. The events took place primarily at two locations: 375 James P. Brawley Drive ("the apartment") and 434 James P. Brawley Drive ("the house). The two addresses are only 562 feet apart. V5 687-688, 730. See also SE08-A (map). Both are within Fulton County. See V5 666-667, 679.

The Initial Instigation

Codefendant **MICHAEL STINCHCOMB** lived in the apartment. V6 845-847; SE36 (photograph of the apartment). On September 05, 2004, near the apartment, Stinchcomb physically assaulted a woman. V6 820-821, 839-840, 853-855, 881-882; V10 1857; SE37-SE39 (photographs). A young relative of the woman saw her injured and went down the street to tell others. V6 821.

Multiple people came to the apartment, and the woman identified Stinchcomb as the person who had beaten her. There were verbal encounters outside. Eventually, Stinchcomb retreated into the apartment. A handful of people entered the apartment after him, including Karen Lymon ("Kiki"), Paula Mathis ("Muffin"), Keretesha Hines, and Tamara Ross. V7 1113, 1249-1250, 1285.[2] An altercation ensued in which Stinchcomb was beaten for what he had done. See V7 1084-1085, 1088.

The Codefendants Assemble

Codefendant **DWIGHT PARKS** testified that on the day of the incident, he received a call from Appellant **FREDERICK TERRELL**, who was angry and said that some guy had chased another guy with a weapon, had kicked the door in and run into Terrell's aunt's home, and probably had held people at gunpoint. V9 1615-1618, 1638. This was in reference to the Stinchcomb incident. Terrell wanted Parks to ride over to the apartment with him to see if Terrell's aunt was all right and said **KELVIN GILLIAM** was going to pick them up. V9 1616, 1618. Terrell was upset

[2] Broderick Stallings had walked down to the outside of the apartment, but no one testified he went inside the apartment. See V7 1312 (Mathis). Stallings testified he left before Stinchcomb went inside. V8 1556.

and crying over the telephone and, when he arrived at Parks's house, was hostile. V9 1618. Terrell said that he was going to shoot "Broderick." V9 1618, 1635-1636; V9 1656. However, Terrell did not have a gun at that time. V9 1618.

Parks testified that Gilliam then arrived to pick them up. V9 1619. There was a rifle (State's Exhibit 12) conspicuously in the front passenger seat of Gilliam's vehicle. V9 1619-1620, 1634-1636.

When they arrived at the apartment, Terrell's aunt was fine and sitting outside. V9 1621, 1641. Terrell and Gilliam went inside. V9 1621. About five minutes later, Terrell and Gilliam exited the apartment along with Stinchcomb—whose mouth was busted up—and all four men got into the car. V9 1621-1622. Because Parks had seen Terrell's aunt was fine, Parks assumed they were going back to Parks's home. V9 1622. Instead, without discussing it in front of Parks, they traveled to a different location. V9 1640-1643.

The Shooting at the House

Shortly after the beating of Stinchcomb, see V7 1090, Terrell, Gilliam, Stinchcomb, and Parks all traveled in a car to where Karen Lymon ("Kiki") and her friends were, which was the house, where numerous people were on the porch.

According to at least six witnesses, Terrell jumped out of the car and started to shout about people "fucking with" one of his relatives. See V6 1011; V7 1093-1094, 1126-1127, 1151; V7 1251; V7 1287; V8 1479, 1489, 1508; V9 1623-1624. According to at least four witnesses, Stinchcomb pointed out individuals, including Paula Mathis, saying "there go two of them right there." V6 1022; V7 1290-1291, 1297; V8 1509-1510; V9 1623-1625, 1645. Parks testified Gilliam was pointing out

people as well. See, e.g., V9 1623-1625, 1645. Terrell, who had jumped out of the car with the firearm in his hand, began shooting at people who were on the porch, including:

- Tamara Ross's children **DIAMOND ROSS** and **GEMIKA ROSS**, V7 1251; V8 1529; DE13. One of these children was struck by one of the bullets. V7 1304; V8 1478, 1480-1481, 1490-1491. See also V6 1008-1010; V7 1287, 1291, 1304; V8 1575.
- **MICHAEL MITCHELL**. See V6 1028; V8 1517.
- **KERETESHA HINES**. V6 983. Testimony specifically showed that Terrell pointed a firearm at Keretesha Hines. V6 1008-1010.
- **UNITA HINES**. V6 1028. Testimony specifically showed that Terrell pointed a firearm at Unita Hines. V6 1028; V8 1581. See also V6 983.

  and
- **PAULA MATHIS**.[3] V6 1009-1010. Testimony specifically showed that Terrell pointed a firearm at Paula Mathis. Id.

Numerous witnesses testified that after the first shots Stinchcomb and Gilliam directed Terrell's attention to the side of the house, and that Terrell then moved to the side of the house and shot at persons who were fleeing, including Paula Mathis ("Muffin"), who had run through the house and out of the back door. V6 1011-1012; V7 1095-1096, 1176; V7 1252-1253, 1268; V7 1287-1288, 1298; V8 1477-1480,

[3] Paula Mathis is also named **LISA JOHNSON**, V7 1279, which was the name listed in the indictment.

1491, 1512; V8 1576, 1583; V9 1646-1647. See also V8 1390-1391, 1395-1396; V8 1437-1438, 1444-1445, 1448.

Multiple witnesses testified that, as he was getting back into the car, Terrell shouted out obscenities and threatened acts in the near future. See V6 1013; V7 1199-1201 (Thompson: Terrell said he'd be there, to tell Muffin and Kiki he'd be waiting for them; that he would "fuck them up" or "shoot they ass"); V8 1379, 1397, 1408 (Willis: Terrell said "it's not over"); V8 1506-1507, 1530 (Mitchell: Terrell said "This shit ain't over. Y'all going to learn about fucking with my folks" / said he would "be there all day"). See also V8 1576, 1581, 1585.

The four men (Terrell, Stinchcomb, Gilliam, and Park) then got back into the car and drove back to the apartment. V9 1626. See also V7 1209.

The attack left multiple bullet holes in the house. V5 679-687, 703-705, 707-708; SE14-SE24 (scene photographs).

The Shooting at the Apartment

TASHIBA MATTHEWS and Broderick Stallings, who were inside the house at the time of the first shooting, walked down to the apartment. See V7 1096-1097; V7 1191, 1198; V8 1560. Matthews and Terrell had known each other a while. V7 1097. Matthews intended to talk to Terrell about the shooting. V7 1131; V7 1235; V7 1258; V8 1560. As they approached, Terrell shot Matthews in the face, killing her. See, e.g., V7 1338-1339, 1342, 1344 (bystander); V5 604-613, 615 (medical examiner); SE01-SE06 (autopsy photographs).

Immediately After the Shooting

According to Parks, Terrell's aunt ordered the four men "to get the hell out of here," and they got back in the car and left. V9 1629. According to Parks and three bystanders, Terrell was seated in the window of the car with the gun in his hand as the car drove away. V9 1629; V7 1352-1355; V8 1382; V8 1459. According to Parks and one bystander, Terrell was on the front passenger side. V9 1623, 1629; V7 1352. As this was happening, two bystanders tried to go to Matthews but at first Terrell either pointed the gun at them, V8 1382, 1401; V8 1419, or continued to have it pointed at Matthews's body as if he was going to shoot again, V8 1441, 1459.

At no point during any of these events did Parks see anyone with a gun other than Terrell. V9 1690-1691. Although he did say he did not know if at the house Terrell shot first or if someone from the porch did so, V9 1699, Parks specifically testified he did not see any guns at the house. V9 1696.

Apprehension of the Four Men

After the shooting, the four men then got back into the car and drove away. V9 1629-1630. They did not get far. A mile away, the police stopped the car. V5 639-642; V5 766; V9 1629-1630; SE08-A (map). Inside the car was the rifle, which was in front-seat passenger Terrell's lap, and there was one magazine of bullets in the rifle and one in Terrell's pocket. V5 650, 667-670, 672-673; V9 1630; SE08, SE10 (magazine/gun clip); SE09 (bullets); SE12 (rifle).[4] The rifle was a semi-automatic firearm. V6 894-895 (firearms and tool marks examiner).

---

[4] One officer identified Stinchcomb rather than Terrell as the front seat passenger. V5 648-649.

Terrell's Testimony

FREDERICK TERRELL ("Boochie") testified and admitted that he got Parks and Gilliam to go with him to the apartment. V9 1744-1747. He testified that he went into the apartment and saw it was trashed. V9 1748, 1827. Terrell testified he then retrieved the firearm (State's Exhibit 12) from his closet, which he stated was his firearm and was not something he had gotten from Gilliam, and testified that he retrieved it specifically to deal with the people at the house "because I knew what kind of people I was up against." V9 1747, 1749-1750. Terrell described the situation as: "These people tried to come at me at my house." V9 1793.

Terrell testified that there were only four people on the porch when they got to the house. V9 1752. Terrell admitted that he absolutely possessed the firearm when he got out of the car but claimed that no one would have been able to see the firearm in his hand. See V9 1787-1789. Terrell claimed he only fired at the porch because Broderick Stallings was in the doorway and pointed and fired a gun at Terrell. V9 1752-1755, 1791. Terrell claimed that, upon being fired at, Stallings "backed back up in the house." V9 1763. Terrell claimed that after he fired two or three shots, the four men got back in the car and returned to the apartment. V9 1755.

When asked "Why did you go up to the house and shoot it up?" Terrell responded: "Because, again, I was mad. This was stuff I worked for," referring to property at the apartment. V9 1795. See also V9 1796. "I was just plain mad because they went in my house and tore my things to trash." V9 1799. Terrell testified he went to the house because he "was angry[.]" V9 1812.

Terrell testified that at the apartment the men dispersed and that Terrell placed the rifle a step or two away, but not fully away, because he *knew* what was going to happen. V9 1757-1578. Terrell testified that a few minutes later he saw Stallings walking down the street with the same gun as before and that Matthews was with him. V9 1759-1760. "[W]hen I saw the gun, I already was headed toward my gun because I already knew what it was… When I left up, he was coming up with his, and I let off about two or three shots again." V9 1760. See also V9 1783-1784, 1805-1806. Terrell testified that he could see Stallings coming but, because of bushes, Stallings could not see Terrell when Terrell first ran for his gun. V9 1783, 1802-1803, 1806. Terrell admitted that he is the one who shot Matthews. V9 1810.

Contrary to four witnesses, including three bystanders, Terrell testified he was not in the window as the car left the apartment. V9 1804.

Terrell testified he would not have had to go to and shoot up the house that Stallings was in if Stallings had not come down and gone through Terrell's house (the apartment), but also admitted he did not know that Stallings was the one who entered and wrecked the apartment. V9 1785.

Gilliam's Testimony

Gilliam testified. V10 2029 et seq. Terrell is Gilliam's cousin. V10 2030.

The first time Gilliam had seen State's Exhibit 12 (the firearm) was an encounter during which Parks and his brother showed it to Terrell, and Gilliam subsequently saw it the closet at his mother's home (the apartment) months before the shootings, but was clear that it had not been there later on. V10 2039-2040, V10 2070-2071.

According to Gilliam, on the day of the shootings, he received telephone calls from Terrell about the events at the apartment during which Terrell told Gilliam to "Come get me" and that he would be around Park's house. V10 2033-2035. Gilliam picked up Terrell and before they got out to the street, Terrell pulled from his pants State's Exhibit 12 and sat it on the side of his seat. V10 2037, 2060, 2074.

Gilliam, Terrell, and Parks went to the apartment. According to Gilliam, when Stinchcomb emerged from the apartment he announced, "Yeah, now that y'all here we can go up there and fight whoever now. I can fight whoever now," which Gilliam understood was "because we [Gilliam, Terrell, Parks] were there." V10 2041. "So we was like let's go up there." V10 2041. Gilliam admitted the men went to the house to provide backup for a fight, but asserted he was only going to do so if someone else tried to jump in. V10 2042, 2076, 2079.

Gilliam testified that at the house he stopped at the stop sign, that Stinchcomb said "Yeah, they be right up here somewhere" and was pointing at someone; that Terrell said "Stop, stop. Everybody get out of the car"; and that Gilliam immediately stopped the car and got out. V10 2042-2043, 2058-2059. Gilliam admitted he told the police that Stinchcomb said, specifically, "There they go," but was coy about whether he told the police Stinchcomb said this while inside or outside the car. V10 2059. Later in his testimony, Gilliam testified that Stinchcomb said "There they go right there" right before Terrell said "Stop." V10 2075. Gilliam admitted that he told police that it was at the house that Terrell removed the gun from his pants; at trial, Gilliam maintained it was already at Terrell's side. V10 2074-2075.

According to Gilliam, he got out, closed the door, and stood next to the car. V10 2043. Unita Hines said "he" went around the corner, without specifying who "he" was. V10 2044-2047. Terrell, who was at the sidewalk, said "Why y'all come up in my house like that?" V10 2047. Terrell was holding the gun at his side. V10 2047. A man on the porch stood up and asked "What the hell you talking about," at which point Terrell raised his gun and started shooting. V10 2048. Terrell fired multiple shots, then stepped to the corner and fired two more. V10 2049. According to Gilliam, Gilliam did not do anything during this encounter and he did not see Stinchcomb do anything, either. V10 2050.

Gilliam did not see anyone on the porch with a gun. V10 2048.

Gilliam testified that the man who argued with Terrell was not Stallings ("Bam") and that Gilliam did not see Stallings that day. V10 2097.

Gilliam admitted that, after that shooting, someone said "Let's go" and he and the three other men all traveled back to the apartment together. V10 2050-2051, 2079-2080. Gilliam testified he was not immediately present for the shooting that occurred at the apartment. See V10 2052-2053. However, Gilliam saw Terrell shooting. V10 2053. Gilliam admitted he previously told the police that a guy came down the street, said "What's up, Boochie?" and that Terrell ("Boochie") started shooting at him. V10 2063.

Gilliam admitted that he told the police that Terrell started saying "Get me out of here, get me out of here[.]" V10 2063. The men then got into the car together and left. V10 2054.

Part 2: ARGUMENT & CITATION TO AUTHORITY

I. The evidence was sufficient to sustain Gilliam's convictions beyond a reasonable doubt.

In his first enumeration of error, Gilliam asserts the State failed to meet its burden of proving him guilty beyond a reasonable doubt.

Regarding the sufficiency of the evidence, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (III-B) (1979) (citation omitted; emphasis in original). "As long as 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." Miller v. State, 273 Ga. 831, 832 (546 SE2d 524) (2001) (citations and punctuation omitted). And "[w]hile mere presence at the scene of a crime is not sufficient evidence to convict one of being a party to a crime, criminal intent may be inferred from presence, companionship, and conduct before, during[,] and after the offense." Naji v. State, 300 Ga. 659, 661 (1) (797 SE2d 916) (2017) (citation omitted). The superior court charged the jury on parties to a crime. V11 2249-2251. See also OCGA § 16-2-20 (parties to the crime).

The evidence showed that Gilliam picked up two other men, one of whom was armed, and transported them to another location, where they picked up a fourth man. Gilliam then drove the men together to the house, and that they did so in order to have a fight and to retaliate for an earlier incident. Gilliam admits all this.

The evidence showed that at the house, the armed man (Terrell) possessed a firearm and without justification shot at the people on the porch. Gilliam's testimony supports this.

The evidence showed the men were acting in concert, as demonstrated by Gilliam's own testimony that he picked up Terrell and Parks at Terrell's direction and did so based on Terrell's concerns about what happened at the apartment; that Terrell was already armed at this point; that at the apartment it was understood they were going to go fight with the people who had harmed Stinchcomb, who joined them at that point; that Stinchcomb pointed and said "There they go" and that Gilliam took Terrell's commands both to stop and get out of the car; as demonstrated by Gilliam's testimony that he got back in the car after that shooting when someone said "Let's go"; and as demonstrated by Gilliam's testimony that after the second shooting when Terrell demanded that they "Get [him] out of here" they got him out of there. This information came from Gilliam's own testimony.

Through multiple witnesses' testimony, the evidence also established that during the shooting at the apartment Gilliam and Stinchcomb directly participated in the shooting by pointing out people for Terrell to shoot. It is on this point that Gilliam disagrees.

However, "[w]hen reviewing the sufficiency of the evidence [a reviewing court] does not reweigh the evidence or resolve conflicts in the testimony. Resolving evidentiary conflicts and inconsistencies and assessing witness credibility are the province of the fact finder, not the [reviewing] court." Grissom v. State, 296 Ga.

406, 408 (1) (768 SE2d 494) (2015) (citations, punctuation omitted). In reaching its verdict, the jury necessarily rejected Gilliam's version of events.

The evidence amply supported the jury's conclusions that Gilliam was a party to the crime of multiple aggravated assaults upon numerous people who were on the porch at the house. The evidence more than satisfied the Jackson v. Virginia standard as to each of Gilliam's convictions. This Honorable Court should DENY Gilliam's sufficiency claims.

II. Terrell is not entitled to a new trial under his speedy appeal claim as he has failed to show prejudice.

In his second enumeration of error, Gilliam argues that his rights to a speedy appeal were violated by the passage of time. The State acknowledges at least one of the four factors in a speedy-appeal claim weigh in Gilliam's factor. However, Gilliam has not shown the fourth factor—prejudice—and this is fatal to his claim. Specifically, this Court's relatively recent decision in Willis v. State, 304 Ga. 686, 655-659 (820 SE2d 640) (2018), corrected a line of bad case law to which Gilliam claims he was entitled. Gilliam argues that, but for the passage of time, his case would have been decided pre-Willis and that he would have been entitled to a new trial due to issues concerning his motion to strike Juror 03.[5] This claim is speculative and without merit.

[5] To protect jurors' anonymity, just like sexual assault victims, the undersigned encourages the use of alternative means of identifying jurors.

A. Gilliam did not preserve the underlying issue.

Gilliam's Willis-based argument for prejudice focuses on Terrell's motion to strike Juror 03 for cause.[6] The superior court's determination that this claim is WAIVED should be affirmed. See V2 535.

Gilliam did not preserve any motion to strike Juror 03. V4 403-404. Referring to motions to strike, Gilliam's attorney announced "I don't have any others" prior to Terrell's attorney's motion to strike Juror 03, and Gilliam's attorney did not join in that motion as he had done for other motions. Compare with V4 402 ("We join that motion, your Honor," as to a previous motion to strike). Plain error does not apply to voir dire. See Brandon v. State, ___ Ga. ___, 2021 Ga. LEXIS 128 (Ga., Apr. 05, 2021). Gilliam has failed to preserve this issue for review such that he could not have succeeded on his underlying claim even had his case reached this Court pre-Willis. This failure to preserve the underlying claim is fatal to his speedy appeal claim.

B. Speedy appeal rights, generally.

> In Chatman v. Mancill, 280 Ga. 253, 256-260 (2) (a)-(e) (626 SE2d 102) (2006), [this Court] determined that constitutional speedy appeal claims in criminal cases in which a death sentence was not imposed should be evaluated by application of the following "modified Barker factors": length of the delay, reason for the delay, defendant's assertion

---

[6] Gilliam also conditionally makes an identical argument of speedy-appeal prejudice in the event this Honorable Court reverses its decision in Mallory v. State, 261 Ga. 625 (5) (409 SE2d 839) (1991). As the State argues separately in Division III, below, Mallory is not relevant on its face as pre-arrest silence is not at issue in this case. However, should this Court find that Mallory would apply but finds Mallory to no longer be good law, the State would adopt for purposes of speedy-appeal prejudice all the same arguments it makes as to Willis, except for preservation.

> of his right, and **prejudice, i.e., whether the delay prejudiced the defendant's ability to assert his arguments on appeal and, if so, whether the delay prejudiced the defendant's defenses in the event of a retrial or resentencing**. Id. See also Barker v. Wingo, 407 U.S. 514 (92 SCt 2182, 33 LE2d 101) (1972). "**In determining whether an appellate delay violates due process, prejudice, unlike in the speedy trial context, is not presumed but must be shown**." (Punctuation omitted.) Veal v. State, 301 Ga. 161, 168 (3) (800 SE2d 325) (2017), quoting Glover v. State, 291 Ga. 152, 154 (3) (728 SE2d 221) (2012). Appellate delay is prejudicial when there is a reasonable probability that, but for the delay, the result of the appeal would have been different. Chatman, supra, 280 Ga. at 260-261 (2) (e).

Lord v. State, 304 Ga. 532, 542 (8) (820 SE2d 16) (2018) (emphasis added). "[T]here can be no prejudice in delaying a meritless motion for new trial or appeal." Brinkley v. State, 320 Ga. App. 275, 281 (5) (739 SE2d 703) (2013). There can be no prejudice in a delay pending appeal where the enumerations raised on appeal are without merit. Loadholt v. State, 286 Ga. 402, 406 (4) (687 SE2d 824) (2010). See also Mattox v. State, 308 Ga. 302 (3) (840 SE2d 373) (2020) (denying a speedy appeal claim from a 2005 conviction as defendant failed to show prejudice).

C. The first three factors.

Given its finding regarding the lack of prejudice, the superior court did not make specific findings as to the first three factors of Gilliam's speedy-appeal claim. See V2 535-536. Although the State does not question whether the first factor, the length of delay, weighs in Gilliam's favor—the direct review process stemming from a 2005 conviction should have concluded long ago—it does contest the second[7] and

[7] Insufficient evidence exists to show the precise reasons for delay, in part because the defense specifically and explicitly chose to have a motion for new trial

third factors.[8] Should this Honorable Court reverse the superior court's prejudice holdings, the State submits it should remand the case for more specific rulings as to the second and third factors.

D. The superior court did not err as to Juror 03.

Gilliam's argument as to the fourth factor, prejudice, focuses on the superior court's decision to deny **Terrell's** motion to strike Juror 03. The State maintains that the superior court did not err in jury selection.

"When ruling on a potential juror's qualifications, the trial court must make a factual determination based on all the circumstances known to the court, including, but not limited to, the juror's own opinion of his impartiality." Lively v. State, 262

---

at which no evidence was presented. V12 2471-2472, 2543-2544. Moreover, it should be noted that Gilliam's attorney of record has represented him since 2008 and that that attorney did not make a single filing between his appointment and the series of status conferences initiated by the undersigned in 2019 more than a decade later. Nevertheless, the State acknowledges "it is the duty of all those involved in the criminal justice system, including trial courts and prosecutors as well as defense counsel and defendants, to ensure that the appropriate post-conviction motions are filed, litigated, and decided without unnecessary delay." Shank v. State, 290 Ga. 844, 849 (5c) (725 SE2d 246) (2012). See also Hyden v. State, 308 Ga. 218 (3b) (839 SE2d 506) (2020).

[8] Information relevant to the assertion of the right includes the following: For six counts of aggravated assault, Gilliam was sentenced to imprisonment for twelve years, whereas at a retrial he could have received imprisonment for as many as 120 years. Since the appointment of Gilliam's current attorney, the clerk's record reveals Gilliam wrote a single letter requesting an update, which was filed three months after the attorney's appointment in 2008. Gilliam received parole in 2011. According to the attorney, as of May 2019 Gilliam and the attorney had not communicated at all since some point before Gilliam's parole, V12 2461-2463, which had occurred nearly eight years earlier, V2 461-465. Gilliam declined to appear for his own motion for new trial. See V12 2471. It strongly appears that at least for the last decade Gilliam has been uninterested in prosecuting his motion and this appeal.

Ga. 510, 511 (1) (421 SE2d 528) (1992). Whether to strike a juror for cause lies within the sound discretion of the trial judge. Corza v. State, 273 Ga. 164 (3) (539 SE2d 149) (2000). The trial court's exercise of that discretion will not be set aside absent a manifest abuse of discretion. Lewis v. State, 279 Ga. 756 (3a) (620 SE2d 778) (2005).

The superior court did not abuse its discretion in denying **Terrell's** motion to strike Juror 03. Juror 03 testified that, although she had had experiences with law enforcement and with a loved one who was the victim of a violent crime, she would attempt to separate those issues from anything she heard in this case to the best of her ability and would do her best to be fair. V3 166-168. Juror 03 did testify that the area described felt very close to her, V3 173, but the State does not understand that alone as the basis for a strike for cause.

In Diaz v. State, 262 Ga. 750 (2a) (425 SE2d 869) (1993), a juror had expressed doubts about her objectivity but said she would try to be fair. This Court affirmed the trial court's denial of both parties' motion to strike, noting that the juror had not indicated a bias she was unable to lay aside. See also Pitts v. State, 260 Ga. App. 553 (5a) (580 SE2d 618) (2003) (juror stated she would "try to be fair"). The superior court did not abuse its discretion by denying **Terrell**'s motion to strike Juror 03. V4 403-404.

E. The *Willis* decision.

Gilliam's argument that the passage of time has prejudiced him requires this Court to find that Gilliam was entitled (despite Gilliam's lack of a motion to strike) to a line of case law which existed prior to this Court's decision in Willis v. State,

304 Ga. 686, 655-659 (820 SE2d 640) (2018). As such, the State now recounts the change which occurred with Willis.

Prior to the Willis decision, case law held that *if* a superior court erred in denying a defendant's motion to strike a juror for cause, *then* a defendant was entitled to a new trial. Now, post-Willis, case law recognizes any such error as harmless unless a defendant can show that the denial of such a motion to strike resulted in an unqualified juror actually serving on the defendant's jury. As Juror 03 was excused by peremptory strike and did not sit on Gilliam's jury, see V4 408, and as Gilliam has not attempted to show that an unqualified juror served on his jury, the Willis decision precludes relief.

F. Gilliam has not been prejudiced.

Gilliam argues that the superior court improperly denied **Terrell's** motion to strike Juror 03 and that he should have received a new trial based on the pre-Willis case law which this Court has held to be invalid. Even assuming *arguendo* the superior court erred in denying **Terrell**'s motion to strike, Gilliam has not shown prejudice.

First, as noted above, to show a speedy appeals violation, a defendant must show prejudice, i.e., whether the delay prejudiced the defendant's ability to assert his arguments on appeal and, if so, whether the delay prejudiced the defendant's defenses in the event of a retrial or resentencing. The State submits Gilliam's ability to *assert* his claim has not been impeded. That is, all of the factual information Gilliam would have had to make this unpreserved claim earlier still exists in the exact same form as would have existed under a speedier appeal (namely, the

transcript passages which detail Juror 03's statements during voir dire and the fact the superior court denied someone else's motion to strike Juror 03). The passage of time has not affected Gilliam's ability to *assert* this claim on appeal.

Second, Willis corrected a line of cases that was based upon an incorrect statement of law. The State submits that no one is entitled to bad law. Further, this Court described the cases on which Gilliam would have relied as providing procedural rules rather than substantive ones. Willis v. State, supra, 306 Ga. at 706. Under no interpretation of the law has the passage of time deprived Gilliam of any substantive right.

Third, Gilliam's claim is entirely speculative. This Court reviewed the line of cases which it overruled in Willis because the State—through a member of the Fulton County District Attorney's Office—raised the issue as part of its response to a claim just such as Gilliam's claim regarding Juror 03. In describing the line of cases it overturned, the Willis Court noted that it "ha[d] relied on the presumed harm holdings to reverse convictions in only two cases, with the last one decided more than 25 years ago." Id. at 706. It is mere speculation to assume that, if only Gilliam had asserted the same rare claim earlier, this Office would not have responded with the exact same argument it made in Willis.

This Honorable Court should hold that Gilliam has failed to show prejudice.

G. Conclusion.

The State submits this issue is meritless even as to Terrell, who did move to strike Juror 03, and that as such it cannot be anything other than meritless as to Gilliam, who did not. Regardless whether Gilliam's motion for new trial could have

been resolved more expeditiously, this is not a claim which could have resulted in relief for him. For the reasons described above, this Honorable Court should DENY this enumeration of error.

III. Gilliam is not entitled to a new trial due to a prosecutor's question about Terrell, as that question was not an improper comment on an invocation of the right to silence and could not have harmed Gilliam.

In his third enumeration of error, Gilliam claims that one question by the prosecutor requires reversal for commenting on **Terrell's** right to remain silent. It was not such a comment. This claim is without merit.

A. Factual background and superior court findings.

The State elicited from an investigator that Stinchcomb, Parks, and Gilliam made statements to the detective and described some information as to each. V5 693-698. The prosecutor then asked, "Now, Frederick Terrell, did he ever give a statement?" to which the investigator answered: "No." V5 698. As the prosecutor then moved on to introduce waiver of counsel forms related to Stinchcomb and Gilliam, a defendant asked to approach the bench and a motion for mistrial was made. V5 698.[9]

At trial, the superior court found that question and answer were not a comment on **Terrell's** silence. V5 749, 800. The superior court did so again in its order

[9] The motion for mistrial was perfected and made a part of the record at V5 748-750. See also V5 799-800. At the sidebar which occurred when the motion was first made, the superior court offered to provide a curative, but Terrell declined. See V5 750.

denying Gilliam's motion for new trial. V2 536. The State submits the superior court was correct.

Placed in context, the prosecutor's question did not attempt or elicit any mention of **Terrell's** constitutional rights and in no way implied **Terrell** was guilty for failing to make a statement. There was no evidence that the investigator met with **Terrell**, spoke to **Terrell**, asked him for a statement, or reviewed with him the Miranda warnings. The State submits the superior court did not abuse its discretion in finding that the question and answer were not a comment on **Terrell's** silence.

B. Gilliam could not have been harmed by a comment on Terrell's right to remain silent.

Regardless of the merits of Terrell's claim, there is no argument to be made that an alleged comment on **Terrell**'s silence could be error as to Gilliam or harmful to his case. Indeed, Gilliam made a pretrial statement and testified at trial, so silence was not possibly an issue as to him. There was no error with regards to Gilliam, nor was the question and answer harmful to Gilliam's case.

C. *Mallory* does not apply.

Gilliam's only explicit argument is that this comment violated the rule of Mallory v. State, 261 Ga. 625 (5) (409 SE2d 839) (1991). This is patently incorrect. As the Mallory rule was a rule about pre-arrest silence, it is not applicable here, where law enforcement arrested Terrell (along with Gilliam and the other codefendants) almost immediately after his murder of Matthews. Instead, courts "consider the testimony and comments about [a defendant's] post-arrest silence

through the lens of the federal Constitution rather than Mallory." State v. Spratlin, 305 Ga. 585, 593 (2a) (826 SE2d 36) (2019) (emphasis added).

Although Mallory does not apply, the State provides the following responses since Gilliam relies on it: (1) the prosecutor's question did not violate Mallory; (2) even if it did, Mallory was wrongly decided and should be overruled for the reasons described in State v. Orr, 305 Ga. 729 (827 SE2d 892) (2019);[10] and (3) any violation of Mallory was harmless under the nonconstitutional harmless error standard, given that the State presented overwhelming evidence against Terrell and Gilliam, and did not in any way use the answer to the question at issue against either Terrell himself or Gilliam.[11]

Gilliam also includes a conditional assertion that if this Court were to agree that Mallory was not relevant, then that would be an additional ground for speedy-appeal prejudice. Brief of Appellant, page 10. Should this Court correct an older line

---

[10] Although it explicitly did not address the Mallory rule's application to pre-2013 trials, State v. Orr, supra, 305 Ga. at 736 n.6, this Court questioned whether the Mallory rule had ever been legitimate, noting that "Mallory's categorical exclusionary rule is best characterized as judicial lawmaking: a rule excluding a certain type of evidence based on the Court's view of good policy, operating only prospectively," id., at 735. This Court noted "[t]here are good reasons to doubt that this Court had the authority to promulgate such exclusionary evidence rules at all, at least after 1983." Id., at 735-736, citing Ga. Const. of 1983, Art. VI, Sec. I, Par. IX ("all rules of evidence shall be as prescribed by law").

[11] See Rowland v. State, 306 Ga. 59, 66 (3) (829 SE2d 81) (2019) (finding asserted violation of Mallory harmless "[g]iven the strong evidence of Rowland's guilt and the minimal use by the prosecutor of the challenged evidence"). See also Lay v. State, 305 Ga. 715 (4) (827 SE2d 671) (2019) (defendant failed to show prejudice in ineffective assistance claim where attorney failed to object to detective's testimony that defendant told him he did not want to speak to them).

of case law, the State submits that—just as with Willis—Gilliam would not be entitled to that older law. However, again, Mallory applies only to pre-arrest silence, which is not at issue here.

D. The question and answer did not violate the Constitution.

To the extent Gilliam's brief might be read as arguing that the question and answer violated his constitutional rights by commenting on his silence outside of Mallory (which is not a constitutional case), the State maintains that it was not a comment upon silence as such claim is understood under Doyle v. Ohio, 426 U.S. 610 (1976).[12]

Here, neither the question nor the answer at issue established that **Terrell** invoked his right to remain silent—just that he did not give a statement. Even if it did do so, that would not by itself violate the constitution. See Martin v. State, 290 Ga. 901 (1a) (725 SE2d 313) (2012).

Moreover, Doyle error is subject to constitutional harmless error review, which "must be made on a case by case basis, taking into consideration the facts, the trial context of the error, and the prejudice created thereby as juxtaposed against the

[12] The State presumes Gilliam asserts Doyle error regarding post-Miranda warnings not because there was evidence presented that **Terrell** was given Miranda warnings—the trial record does not answer that—but because comment on post-arrest silence in the absence of Miranda warnings is not constitutionally prohibited. See Fletcher v. Weir, 455 U.S. 604, 607 (1982). To be clear, the State submits this question and answer were not a comment at all.

strength of the evidence of defendant's guilt." Hill v. State, 250 Ga. 277, 283 (4) (295 SE2d 518) (1982).[13] As summarized by the Eleventh Circuit, Doyle error has:

> repeatedly [been] held…harmless where the violation consisted of only a single reference to the defendant's post-Miranda silence during the course of a trial at which the government's evidence was otherwise overwhelming. In so holding, we have often emphasized both that the improper reference was "isolated" or "unintentional" or promptly addressed by a curative instruction from the trial court, and that the prosecutor made no effort to further "highlight" the defendant's exercise of Miranda rights either in questioning other witnesses or during closing argument.

Hill v. Turpin, 135 F.3d 1411, 1417 (11th Cir. 1998) (citations omitted).

Here, there was that one question and answer, standing alone. That question and that answer did not assert that **Terrell** refused, or was even asked, to do anything. That question and that answer were isolated. Even assuming *arguendo* the question was a reference to **Terrell**'s exercise of his right to post-arrest silence, Gilliam does not point to any instance in which the prosecutor ever made any further attempt to highlight **Terrell**'s exercise of that right or to any instance in which it was used in somehow against Gilliam. "To reverse a conviction, the evidence of the defendant's election to remain silent must point directly at the substance of the defendant's defense or otherwise substantially prejudice the defendant in the eyes of the jury." Cape v. State, 246 Ga. 520, 523 (2) (272 SE2d 487) (1980). The one question and answer here did not do either of those things as to **Terrell**. It certainly did neither as to Gilliam.

---

[13] Reversed on unrelated grounds by State v. Jackson, 287 Ga. 646 (4) (697 SE2d 757) (2010).

Here, even if error, the question and answer were harmless beyond a reasonable doubt.

E. Conclusion.

For the reasons described above, this Honorable Court should DENY this enumeration of error.

IV. The superior court did not err in denying both of Terrell's motions for mistrial.

In this fourth enumeration of error, Gilliam asserts that the superior court committed reversible error for failing to grant either one of two motions for mistrial. These claims are without merit.

A. Comment on right to silence.

For the reasons provided in Division III, above, the State submits the superior court did not abuse its discretion in denying a motion for mistrial regarding the asserted comment on **Terrell**'s right to silence, that the asserted comment on **Terrell**'s right to silence did not render **Gilliam**'s trial fundamentally unfair, and that this Honorable Court should DENY this part of this enumeration of error.

B. Reference to victim's pregnancy.

Before his guilty plea, Gilliam's codefendant Parks moved for, and the superior court granted, a motion in limine to prevent the State and Stinchcomb from mentioning that Matthews was pregnant at the time of her death. V3 14-17. During trial, Gilliam asked witness Unita Hines questions about whether Matthews was just waking up around the time of the incident or had taken a nap. V6 1054. Hines replied

that Matthews "had been up earlier and ate. She had just found out she was pregnant, so she was sleep." Id. At a sidebar, Gilliam moved for a mistrial based on the motion in limine. The superior court denied the motion. See V6 1067-1070 (discussing sidebar). Subsequent to the sidebar, Terrell's attorney asked Hines multiple questions about Matthews's pregnancy, which established that Matthews was not showing and was only recently pregnant. V6 1063. Later, Terrell's attorney noted for the record that he specifically asked those questions to mitigate any harm. V7 1070-1071.

> The granting or refusing of a motion for mistrial is necessarily a matter largely within the discretion of the trial judge, and unless it is apparent that a mistrial is essential to the preservation of the right to a fair trial, the exercise of the judge's discretion will not be interfered with.

Curry v. State, 305 Ga. 73, 75 (2) (823 SE2d 758) (2019) (citation omitted).

The superior court did not abuse its discretion in denying Gilliam's motion for mistrial, as Hines's statement did not render Gilliam's trial fundamentally unfair. The offending evidence was elicited by Gilliam's own cross-examination of a lay witness. There was no attempt by the State to garner sympathy through Matthews's pregnancy, and the evidence elicited by Terrell established Matthews was only very recently pregnant and was not showing, indicating others would not have known. More important for Gilliam, the jury acquitted Gilliam of each of the offenses which involved the shooting at the apartment, which is the only one in which Matthews was a victim. Gilliam cannot claim he was harmed, or that his trial was rendered fundamentally unfair, by possible sympathy for the recently-pregnant Matthews.

This Honorable Court should DENY this part of this enumeration of error.

V. The superior court did not commit reversible error by denying Terrell's motion to sever his trial from that of his codefendants.

In his fifth enumeration of error, Gilliam argues that the superior court committed reversible error when it denied his request to sever his case from his codefendants. This claim is without merit.

Gilliam's defense was that Terrell committed the shootings without participation from Gilliam. Although there were inconsistencies between the defendants' testimonies, in broad strokes that was the defense of Gilliam's codefendants, as well—including Terrell's. The defenses were not antagonistic in any material way. The main antagonism was between the codefendants' stories that they were not acting in concert at the house and the massive number of witnesses the State presented against them indicating they were acting in concert.

Legally, antagonistic defenses standing alone do not require severance. A "defendant cannot rely upon antagonism between co-defendants to show prejudice and the consequent denial of due process; a defendant must show that the failure to sever harmed him." Slaton v. State, 303 Ga. 651 (3a) (814 SE2d 344) (2018) (citation omitted). Gilliam has not attempted to show this Court that he was actually prejudiced. Indeed, all four of the men—Gilliam, Stinchcomb, Terrell, and Parks—testified. Gilliam was not denied an opportunity to question his codefendants. Gilliam was acquitted of the offenses related to the shooting at the apartment; obviously, the jury was able to consider the evidence against the defendants individually.

Indeed, Gilliam wanted severance in order to admit Terrell's prior convictions for aggravated assault, see V5 565-575, V9 1704-1715, which the superior court excluded, see V9 1714-1715. However, the superior court did not err by excluding those convictions. See, e.g., Division VI, below.

This Honorable Court should DENY this enumeration of error.

VI. The superior court did not err in excluding the admission of Terrell's prior conviction for aggravated assault.

In his sixth enumeration of error, Gilliam claims the superior court erred by failing to admit at trial Terrell's prior convictions for aggravated assault. This claim is without merit.

Gilliam cites no law to support this enumeration of error and thus this Court should hold this claim is ABANDONED. See Supreme Court Rule 22 ("Any enumerated error not supported by…citation of authority in the brief shall be deemed abandoned").

Assuming *arguendo* it is not abandoned, this Court should deny it on its merits. The undersigned is unaware of any rule of evidence which would allow Gilliam to submit such prior convictions to establish anything which would have been relevant to Gilliam's defense. Although Gilliam asserts that Terrell's prior aggravated assault convictions would be "comparable to a similar transaction," Brief of Appellant, page 15, he provides no argument that it actually would be admissible as such. It appears Gilliam wanted to introduce those convictions purely for propensity purposes, which is improper. The State submits that the aggravated

assault convictions alone would not have been admissible. See Stephens v. State, 261 Ga. 467 (6) (405 SE2d 483) (1991) (conviction alone did not satisfy proof requirement for similar transaction).

This Honorable Court should DEEM ABANDONED or DENY on the merits this enumeration of error.

VII. Gilliam did not suffer cumulative error prejudice.

In his seventh and final enumeration of error, Gilliam makes the bare assertion that a new trial is required due to prejudice stemming from cumulative error. First, the State submits Gilliam's "cumulative error argument fails because there are no errors to cumulate." Lynn v. State, 310 Ga. 608, 608 (852 SE2d 843) (2020). Second, Gilliam has not made an appropriate showing of cumulative prejudice as he makes only a cursory statement of cumulative effect and no cumulative prejudice is apparent. See Dukes v. State, ___ Ga. ___ (5), 2021 Ga. LEXIS 268 *20 (Ga., May 17, 2021). Even assuming *arguendo* there were errors, Gilliam's case was not prejudiced by them given the circumstances and evidence as a whole. This Honorable Court should DENY this enumeration of error.

Part 3: CONCLUSION

Wherefore, for the reasons listed above, the STATE OF GEORGIA submits this Honorable Court should DENY Appellant KELVIN GILLIAM's claims on appeal and should AFFIRM his convictions and sentence.

Respectfully submitted,

s:\ KEVIN ARMSTRONG
KEVIN ARMSTRONG 987456
Chief Senior Assistant District Attorney

In the Supreme Court of the State of Georgia

KELVIN GILLIAM, *Appellant*,	)	Case S21A0941
versus	)	On appeal from the Superior Court of
STATE OF GEORGIA, *Appellee*.	)	Fulton County, Case 04SC23704.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June 2021, a true copy of this Brief of Appellee (District Attorney) was served upon the following persons:

JOHN KRAUS, Esq.,
jkraus@lawyer.com
508 Midtown Place, N.E.
Atlanta, Georgia 30308
(404) 323-4444

and

Mr. WILLIAM C. ENFINGER, Assistant Attorney General
wenfinger@law.ga.gov
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia, 30334
(404) 458-3596.

s:\ KEVIN ARMSTRONG
KEVIN ARMSTRONG 987456
Chief Senior Assistant District Attorney