

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

MAURICE DEWAYNE CONNER	:	
Appellant - Defendant,	:	
	:	DIRECT CRIMINAL APPEAL
vs.	:	
	:	Docket Number: A26A2193
STATE OF GEORGIA	:	
Appellee - Plaintiff.	:	

**A direct appeal from the Superior Court of Fulton County
Indictment 13-SC-123643
The Honorable Craig L. Schwall, presiding.**

**OPENING BRIEF FOR APPELLANT
MAURICE DEWAYNE CONNER**

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ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

The Court of Appeals of Georgia, rather than the Supreme Court of Georgia, has jurisdiction over this appeal because the offense of conviction, conspiracy to commit murder, is a felony not punishable by death nor otherwise reserved to the exclusive appellate jurisdiction of the Supreme Court of Georgia. GA. CONST. Art. 6 § 5 ¶ III. No direct constitutional questions are presented. GA. CONST. Art. 6 § 5 ¶ II (1).

PART ONE: COURSE OF PROCEEDINGS BELOW

This novel appeal presents a question of collateral estoppel between co-defendants in a joint criminal trial. Prior to trial, the trial court granted the State's motion *in limine* to bar the defense from eliciting facts regarding an FBI Agent's misconduct during the investigation. After the defendants were convicted, the trial court reversed himself and granted one co-defendant's motion for new trial. The State ultimately withdrew its appeal of the co-defendant's new trial order in exchange for a negotiated plea, but when Conner sought the benefit of the same ruling (an objection which he joined), the trial court reversed himself a third time and denied the error the State chose not to appeal. Because the State was collaterally estopped from this fundamental unfairness, a new trial is required.

A. Factual Background.

On June 7, 2012, Rebecca Bouras had just left work at the Northside Hospital complex when she heard five or six gunshots while inside her vehicle. [T. Vol. 5 at 944-45]. After hearing the shots, a distraught security guard¹ pointed Bouras to a white Audi A-7 on the first level of the parking deck. [T. Vol. 5 at 947-48]. Inside the Audi, Melvin Vernell, III was slumped over in the driver's seat with music still

¹ The security guard testified that he saw a "flash" of someone running away toward Johnson Ferry Road but could not distinguish the person's features. [T. Vol. 6 at 1058, 1070]. The guard received a bag containing money and cell phones that were retrieved from Vernell's person.

playing. [T. Vol. 5 at 948, 959]. Vernell was shot in the back. The Audi was struck six times—five through the back window and once on the hood. [T. Vol. 9 at 1631].

Other people in the parking lot partially witnessed the shooting. Laura Evans saw a black male, slightly taller than 5 foot seven, wearing black pants, a red shirt, and a hat, approach the Audi and shoot into the back from approximately 20 feet. [T. Vol. 6 at 996, 1000-01]. Evans observed two men run after the shots. [T. Vol. 6 at 999]. When presented with a photo lineup, however, Evans could not make a confident identification. [T. Vol. 6 at 1012-13, 1019].

Chad Spearman, a new father then-present in the parking deck, saw the two men and described the shorter man as dark skinned with a red hoodie and a “balding fade” haircut, [T. Vol. 6 at 1026, 1037, 1049], while the second man was taller and light-skinned. [T. Vol. 6 at 1026, 1029, 1037]. Spearman was shown two lineups, in which he circled suspected with equivocal certainty, but at trial he testified he was no longer certain that the individuals he circled were the shooters. [T. Vol. 6 at 1044, 1047]. Joyce Tritt speculated that the suspects were black males in their 20’s, but did not identify any specific person. [T. Vol. 6 at 1084, 1095]. Two women from the hospital selected lineup photos that were *not* the defendants on trial. [T. Vol. 15 at 2843, 2973-76].

According to his fiancée, Alnese Frazier, Vernell was a successful, up-and-coming rapper who was then known under the moniker, “Lil Phat.”² [T. Vol. 5 at 966-67]. Vernell was at Northside Hospital that day because Frazier had been hospitalized due to pregnancy complications. [T. Vol. 5 at 971-72]. On June 7, Vernell arrived to visit Frazier at 2:00pm and stayed for three hours before he was shot. [T. Vol. 5 at 971-74].

Although Frazier feigned that Vernell did not smoke marijuana, [T. Vol. at], a small bag of marijuana was located on Vernell’s Audi and extraction of Vernell’s phone revealed pictures of Vernell (dated June 1, 2012) showing five bundles of marijuana and stacks of cash. [T. Vol. 10 at 1873-74]. Recovered messages between Vernell and "Decatur Black" discussing the movement of "bricks" and "zips" (slang for drugs) in early June 2012. [T. Vol. 10 at 1877-79]. Frazier denied knowing anyone by the name of Eldorado Red, nor the gang “BGM.” [T. Vol. 5 at 987-88]. But a Glock 17 9-millimeter pistol with an extended magazine was located on the Audi’s rear passenger floorboard. [T. Vol. 8 at 1616-18].

There were no security cameras along the streets or sidewalks of the Northside campus. [T. Vol. 6 at 1189]. Camera footage videos from the deck either depicted no relevant information or were severely degraded. [T. Vol. 7 at 1245-46]. No

² Lil Phat was then associated with the record label Trill Entertainment, which was operated by Vernell’s father. [T. Vol. 5 at 969, 978].

usable fingerprints were found on the shell casings; and fingerprints taken from the Audi only matched Vernell. [T. Vol. 9 at 1637-38].

Casings located at the scene corresponded with one gun, [T. Vol. 8 at 1597-98, 1601], and a Sandy Springs patrol officer located a skullcap/doo-rag laying in an empty parking space in a neighboring parking deck, south of the Northside Women's Center. [T. Vol. 6 at 1169, 1173].

The Audi was rented. [T. Vol. 14 at 2639]. This vehicle had GPS tracking devices installed behind a driver's side vent and glove compartment. [T. Vol. 9 at 1641, 1680-81]. These GPS devices showed the Audi location as it travelled to Northside Hospital—iMetric GPS data later recovered showed the Audi was tracked. The account used to track was "maninyc777@gmail.com," which belonged to Mani Chulpayev. [T. Vol. 7 at 1287-88].

Chulpayev ran a luxury rental car business out of Miami, Florida; in Chulpayev's words he "rented high-end cars to dope dealers under straw names" and was promoted by laundered drug cash.

Chulpayev was registered as an FBI confidential informant who gave information to FBI Agent Dante Jackson, to shift the investigation towards White and Bradford. [T. Vol. 15 at 2852-53]. Chulpayev was involved in "controlled calls" with White as early as June 21, 2012 regarding the tracking devices and

purging information. [T. Vol. 15 at 2866-71]. Chulpayev never mentioned Conner during his interviews with law enforcement. [T. Vol. 15 at 2946, 2949].

FBI Special Agent Kevin Horan analyzed the call detail and tower records associated with a phone number registered to Conner (334-354-3730). [T. Vol. 7 at 1356]. For June 6, 2012, these records showed Conner's phone moving from Montgomery, Alabama beginning at 4:00pm, heading northeast along the interstate, and arriving in north Atlanta by 11:59pm. *Id.* Conner's phone communicated with a cell tower near a reported traffic stop in Alabama at 5:35pm. [T. Vol. 7 at 1357]. Alabama Trp. Edward Long testified that Conner drove the Altima he stopped for going 95mph in a 70mph zone on Interstate 85, northbound, near Opelika, Alabama. [T. Vol. 8 at 1511].

According to Trp. Long, Conner argued with his girlfriend on the phone, who had rented the Altima due to her own vehicle issues, while the passenger, Deandre Washington appeared nervous. [T. Vol. 8 at 1513, 1528]. Conner told Trp. Long that he was travelling to Atlanta for a funeral, and was issued citations for speeding and driving without a license. [T. Vol. 8 at 1520, 1522].

Around midnight, Conner's cell phone was in the vicinity of the Garden Plaza Hotel in Norcross, Georgia. [T. Vol. 7 at 1359]. The next morning, Conner's phone pinged towers near the Garden Hotel between 9:44am and 11:57am. [T. Vol. 8 at 1410]. Between 4:05pm and 6:41pm, this phone utilized cell sectors in proximity to

Northside Hospital. FBI Horan clarified the “70 percent rule”—that his analysis could not pinpoint a phone’s exact location. [T. Vol 8 at 1451, 1461]. Conner’s call records showed that his phone called a Los Angeles-based number (323-798-6489) one minute after Vernell was shot. [T. Vol. 14 at 2735, 2737, 2743].

An incarcerated, motivated witness from Alabama, Jordan Thomas, was produced from jail (awaiting his own murder trial) and told the jury that Washington confessed shooting Vernell. [T. Vol. 9 at 1751, 1823]. According to Thomas, Washington claimed he waited under a car for hours the night before the murder, and eventually shot Vernell with a .357 handgun in a parking garage after receiving a tip-off. [T. Vol. 9 at 1751, 1758, 1760]. Washington allegedly told Thomas that he was paid \$10,000 and two pounds of marijuana for his role, but Thomas was impeached with multiple objective facts from the scene that did not align with his account. [T. Vol. 9 at 1807-08]. The search of Washington’s phone revealed photos of him and Bradford together at various locations in 2013. [T. Vol. 10 at 1917-18].

Investigators also received a confession from Keon Pullins, an individual in Louisiana who was later dismissed. [T. Vol. 14 at 2657-59]. Investigators determined that Vernell had a rift with a Louisiana rapper, “Lil Boosie,” who was also in custody in Louisiana at the time Vernell was shot. [T. Vol. 15 at 2835-39].

Jerome Minor, a former member of the Crips gang in Montgomery, Alabama, described BGM as a drug-selling organization that used a record label as a front. [T.

Vol. 8 at 1562, 1565]; [T. Vol. 9 at 1701-02, 1713]. Minor claimed to have acted as a middleman for Bradford's drug transactions; Minor testified that both Conner and Washington were BGM members. [T. Vol. 8 at 1562, 1565, 1579].

Descansa White ("Grizz"), a former college athlete turned marijuana wholesaler, testified the motive for the shooting was a robbery of 10lbs of marijuana from his courier. [T. Vol. 10 at 1976-77].

This stolen marijuana was intended for Bradford. Bradford met White in 2009, and White began supplying Bradford with 8 to 12 pounds of marijuana weekly, loads worth approximately \$70,000. [T. Vol. 10 at 1946, 1952]. When the courier (Calvin Johnson) was robbed, Bradford convinced White that Vernell and "Duke" were responsible. [T. Vol. 10 at 1985-86, 1990]. White said Bradford was not present at the hospital when Vernell was shot, [T. Vol. 11 at 2050], and described his relationship with Bradford as "business friendly." [T. Vol. 11 at 2070].

White obtained the GPS coordinates for Vernell's Audi A-7 from Chulpayev and began to track Vernell. [T. Vol. 10 at 1991-95]. White testified that Bradford ordered the hit of Vernell to be done "mob style," and that afterwards he met with Washington and others at southside apartment where Washington re-enacted the shooting. [T. Vol. 10 at 2019-20]. Though, White described the shooting as a "crime of omission," claiming that his original intent was only to recover the stolen 10 pounds of marijuana, not to kill Vernell, and that he failed to stop the shooter. [T.

Vol. 11 at 2142-44]. White fled to California after the shooting but was arrested by U.S. Marshals.

White pleaded guilty to the conspiracy to murder Vernell and testified in exchange for a negotiated, eight year sentence cap. [T. Vol. 11 at 2039-40, 2149]; [State's Ex. 188]. White admitted to being a marijuana wholesaler and to laundering over \$100,000 into Chulpayev's luxury rental car business. [T. Vol. 11 at 2137, 2164]. According to White, Chulpayev disliked Vernell because Vernell damaged the cars he leased and brought police attention to Chulpayev's business. [T. Vol. 11 at 2102, 2139-40].

While in jail, Task Force officers wiretapped Bradford's contraband cell phone (later located inside a sock) and intercepted communications in which Bradford deputized his girlfriend to attempt the purchase of 10 pounds of marijuana from LaRon Bonner. After Bonner left the meeting with Bradford's girlfriend at Embassy Suites Buckhead, his vehicle was stopped, yielding two pounds of marijuana and \$14,000 in U.S. currency. [T. Vol. 11 at 2270-72, 2279-80]. Bradford on several intercepted calls referred to himself as a general and OG, but asserted his innocence and claimed White had lied. [T. Vol. 11 at 2297]. In other intercepted calls, Bradford told his mother and girlfriend that he had nothing to do with Vernell's shooting and that he never threatened White.

FBI Agents searched Chulpayev's office in Miami, Florida. Chulpayev's warehouse revealed very little activity or equipment. [T. Vol. 12 at 2401-03]. In an office, agents located a handgun screwed to the bottom of a desk and found tracking equipment and lease paperwork for the Audi rented to Vernell. [T. Vol. 12 at 2407]. In an interrogation, Chulpayev admitted that he leased 144 high-end cars, primarily to "dope dealers" using straw names. [T. Vol. 12 at 2406, 2408]. Chulpayev admitted he was in business with White and that White had invested approximately \$165,000 into his business through cash payments. [T. Vol. 12 at 2408-09]. Chulpayev claimed that Bradford was White's marijuana source. [T. Vol. 11 at 2321, 2324]. In over 1,000 intercepted calls and texts, Agents found no communications between Chulpayev and Connor.

B. Procedural Background.

On December 20, 2013, a Fulton County grand jury reindicted Bradford, Chulpayev, Conner, Washington and White in 13-SC-123643, naming Conner in count one with violating Georgia's Street Gang and Terrorism Prevention Act; in count two with conspiracy to commit murder; in count three with malice murder; in counts four and five with felony murder; in count six with aggravated assault; in count seven with possession of a firearm during the commission of a felony; and in count eight with possession of a firearm by a convicted felon. [R. at 4]. Conner denied the allegations, entered not guilty pleas to all counts, and demanded a trial.

Prior to trial, Conner moved to suppress “illegally obtained evidence,” challenging an Alabama District Attorney’s application for a court order to seized Conner’s cell phone records from the provider. [R. at 91-93]. The motion noted that these records were obtained without a search warrant, but that the State had secured a search warrant after they had already reviewed the records. [R. at 93].

This motion was argued in limine. The trial court denied the motion, finding that even if a search warrant was required to obtain Conner’s cell records from the provider, Alabama’s “good faith” exception to the exclusionary rule salvaged this search, [R. at 313], even though Georgia at this time did not recognize a good faith exception to O.C.G.A. § 17-5-30 (b). *Gary v. State*, 262 Ga. 573 (422 SE2d 426) (1992). Alternatively, the Court also denied Conner’s challenge to the subsequent search warrant obtained for these records, finding that the independent source doctrine applied. [R. at 313-14].

Central to the joint defense strategy was to expose evidence of misconduct by FBI Agent Dante Jackson, who participated in the investigation with Sandy Springs detectives. As the defendants argued before the trial court, they had amassed hundreds of pages of discovery showing that FBI Jackson sought to protect Chulpayev, who was then a paid informant. [MNT June 5, 2025 at 28]; *see also* [T. Vol. 5 at 820-43]. Knowing the defense was armed with this impeachment, the prosecution decided not to call FBI Jackson and then moved the trial court to prevent

the defense from introducing evidence of FBI Jackson's misconduct through *any* source. After heated pretrial argument, the trial court granted the State's motion over protestations by each defendant that the State had invited reversible error.

At trial, the State called over 40 witnesses to support its prosecution theory that Washington and Conner shot Vernell in the hospital parking deck at Bradford's direction, to avenge the prior robbery of Calvin Johnson. The defense was mistaken identity. Conner argued that no witness or physical evidence placed him in the hospital parking deck and that the circumstantial witness descriptions were inconsistent with Conner's appearance.

After deliberation, the jury acquitted Conner of counts three, four, five, six, and seven, but convicted him of counts one (Gang Act), two (conspiracy), and eight (possession of a firearm by a convicted felon).³ [R. at 309]. The trial court sentenced Conner to thirty years in prison—15 years on count one, 10 years on count two consecutive, and five years on count eight, consecutive to count two. [R. at 297-98].

Conner filed a timely preliminary motion for new trial.⁴ [R. at 472]. After conviction, Bradford's motion for new trial proceeded because he had private counsel, while Conner and Washington's motions stalled, awaiting new counsel.

³ Bradford was convicted of the same counts but Washington was convicted of all counts.

⁴ Conner's motion for new trial was filed into a former case number (13-SC-119129), a scrivener's error. [R. at 479].

While Conner and Washington were unrepresented, the trial court set an individual hearing on Bradford's motion for new trial, ultimately granting it. [R. at 343-56].

In its order, the trial court found that it erred when it denied the defense the right to introduce at trial evidence of FBI Agent Dante Jackson's misconduct during the investigation of this case. [R. at 343]. The order made significant factual findings that Agent Jackson – together with Chulpayev – misled the Sandy Springs investigators towards Conner and Washington, who were unknown prior to Jackson's involvement. [R. at 344-50]. Finding reversible error, the trial court found that Agent Jackson's misconduct was "extremely relevant" because it "jeopardized the integrity of the investigation" and "directly supported the defendants's theory of the defense." [R. at 351-55].

The State filed a timely notice of appeal, [R. at 357, 364], but after correcting the style of the case, the assigned prosecutor withdrew the State's appeal. [R. at 391] ("...ANNOUNCES that the State is withdrawing its appeal in the above-styled case."). Four days later, Bradford entered a negotiated guilty plea to counts one and two under *North Carolina v. Alford*, 400 U.S. 25 (1970) and received a sentence of seven years probation. [R. at 402].

With newly-appointed appellate counsel, co-defendant Washington moved the trial court for a conforming order, which Conner adopted. [R. at 406-09]. Conner and Washington argued that the trial court's order finding reversible error

for its erroneous exclusion of Agent Jackson's misconduct became final when the State withdrew its notice of appeal, and that collateral estoppel precluded the readjudication of the Agent Jackson issue because Conner was in privity with Bradford. *Id.*

The State responded that collateral estoppel did not apply between co-defendants in a criminal case and that it did not get to fully litigate Bradford's motion for new trial. [R. at 414-16]. The trial court then reversed itself *a third time* and denied the motion, finding the State had shown the Bradford decision was likely wrong. [R. at 420-24]. Even if the remaining defendants were entitled to the Bradford order's finding of error, the trial court reasoned, a defendant-specific analysis of harm was required. *Id.*

Conner then amended his motion for new trial to particularize six enumerations of error, including ineffectiveness of trial counsel. [R. at 430-32]. In enumeration one, Conner advanced the prevailing argument in Bradford: that the trial court committed reversible error when it denied him the right to introduce evidence of FBI Agent Dante Jackson's misconduct during the investigation. *Id.* In its response, the State argued against the merit of the order it had declined to appeal. [R. at 441-44]. At the motion-for-new-trial hearing, trial counsel gave a significant offer of proof detailing how the Agent Jackson misconduct issue was central to the

joint defense strategy, and describing how the trial court's ruling affected his presentation of Conner's defense. [MNT June 5, 2025 at 16-23, 28].

The trial court denied the motion. [R. at 458]. In its order, the trial court confirmed its third "about-face," holding that Agent Jackson did not testify at trial and finding his credibility was not relevant. [R. at 459]. The trial court further found that "Defendant is not entitled to a new trial on the basis that the Court previously granted a codefendant's motion for new trial." *Id.*

On August 5, 2025, Conner filed a timely notice of appeal to the Court of Appeals of Georgia. [R. at 1]. This Court granted oral argument. This briefing follows.

PART TWO: ENUMERATIONS OF ERROR

- I. The trial court erred in denying Conner's general demurrer to count one, to wit: Participation in Criminal Street Gang Activity.

Preservation Below: Conner preserved his challenge to the trial court's ruling by adopting the demurrer argument of co-defendant Bradford. [T. Vol. 5 at 848-51].

- II. The trial court committed reversible error when it denied Conner's motion for conforming order, reversed its ruling from the Bradford order outside the term of court, and denied Conner the right to introduce evidence of FBI Agent Dante Jackson's misconduct during the investigation of this case.

Preservation Below: Conner preserved his challenge to the trial court's ruling in limine by joining co-defendant Bradford's motion, [T. Vol. 4 at 826]; [T. Vol. 5 at 841, 843], and by filing a motion for conforming order after the trial court granted Bradford's motion for new trial for this error. [R. at 406].

- III. The trial court erred in denying Conner's motion to suppress "illegally obtained evidence" (filed July 11, 2014), challenging the warrantless acquisition of Conner's cell phone records and a subsequent search warrant.

Preservation Below: Conner preserved his challenge to the trial court's ruling by filing a timely motion to suppress. [R. at 91].

- IV. The trial court erred in denying Conner's objection to the introduction of rap lyrics and a music video for "100 shooters."

Preservation Below: Conner preserved his challenge to the admission of this evidence by contemporaneously objecting and moving to exclude this character evidence. [T. Vol. 5 at 852-57].

- V. Trial counsel rendered ineffective assistance that prejudiced the verdict.

Preservation Below: Conner preserved his challenge to the performance of his trial counsel by raising the issue before the trial court at the earliest possible opportunity in the amended motion for new trial. [R. at 432, ¶ 6].

STANDARD OF REVIEW

I. Erroneous overruling of general demurrer.

The trial court’s ruling on a general demurrer is reviewed de novo. *Jones v. State*, -- Ga. App. – (-- SE2d --) 2026 WL 1757519, at *2 (1) (No. A26A0321; June 18, 2026) (citing *Budhani v. State*, 306 Ga. 315, 319 (1) (a) (2019)).

II. Erroneous exclusion of FBI Agent Jackson Misconduct evidence.

Evidentiary rulings are reviewed under an abuse of discretion standard, which is “different from and not as deferential as the clearly erroneous/any evidence standard of review.” *Reeves v. State*, 294 Ga. 673, 676 (2), (755 SE2d 695) (2014).

III. Erroneous denial of motion to suppress.

“In reviewing the trial court’s grant or denial of a motion to suppress, we apply the well-established principles that the trial court's findings as to disputed facts will be upheld unless clearly erroneous and the trial court's application of the law to undisputed facts is subject to de novo review[.]” *State v. Palmer*, 285 Ga. 75, 78 (673 SE2d 237) (2009) (citation omitted).

IV. Erroneous admission of music video evidence.

A trial court’s ruling on the admissibility of evidence is reviewed for abuse of discretion. *Baker v. State*, 318 Ga. 431 (899 SE2d 139) (2024).

V. Ineffective assistance of trial counsel.

“In reviewing the trial court’s decision [on an ineffective assistance claim], we accept the trial court’s factual findings and credibility determinations unless clearly erroneous, but we independently apply the legal principles to the facts.” *Szorcsik v. State*, 303 Ga. 737, 742 (5) (814 SE2d 708) (2018) (citations omitted).

PART THREE: ARGUMENT AND CITATIONS TO AUTHORITY

I. The trial court erred in denying Conner’s general demurrer to count one, to wit: Participation in Criminal Street Gang Activity.

Prior to trial, co-defendant Bradford argued that count one was subject to general demurrer for omitting the specific intent element necessary for a defendant to violate Georgia’s Street Gang and Terrorism Act. [T. Vol. 5 at 848-51]. Conner adopted this demurrer. *Id.*; *see* [T. Vol. 20 at 3823].

In each instance, the defendants’ primary contention was that count one failed to allege specific intent, to wit: that Conner committed the enumerated, predicate offenses alleged with the intent to further the interests of the gang. *See Rodriguez v. State*, 284 Ga. 803 (2009) (construing O.C.G.A. § 16-15-4 and holding that Street Gang Act did not violate the First Amendment because an essential, “nexus” element required the State to prove that the enumerated felonies were committed with intent to further interests of the gang); *see also Lee v. State*, -- Ga. --, (-- SE2d --), 2026 WL 1390745, at *3 (No. S25G0768; decided May 19, 2026) (“[T]o find a defendant guilty of participating in criminal gang activity under OCGA § 16-15-4, a jury must make the ultimate finding that the defendant committed the offense with the intent to further the criminal purposes of the gang.”).

“A motion to dismiss for failure to state a claim under OCGA § 9-11-12 (b) (6) performs substantially the same function as a general demurrer.” *See Kimbrough v. State*, 300 Ga. 878 , n.12(799 SE2d 229) (2017) (citing *W. Contracting Corp. v.*

State Highway Dept., 123 Ga. App. 331, 333 (1), 181 S.E.2d 89 (1971)). “A general demurrer challenges the sufficiency of the substance of the indictment.” *Id.* at 880 (1) (quoting *Green v. State*, 292 Ga. 451, 452 (2013)). Under Georgia law, “the true tests of the sufficiency of an indictment . . . is as follows:

If all the facts which the indictment charges can be admitted as true, and still the accused be innocent, the indictment is bad; but if, taking the facts alleged as premises, the guilt of the accused follows as a legal conclusion, the indictment is good. *Cohen*, 302 Ga. at 617-18 (1).

“[T]o withstand a general demurrer,⁵ an indictment must: (1) recite the language of the statute that sets out all the elements of the offense charged, or (2) allege the facts necessary to establish a violation of a criminal statute.” *Jackson v. State*, 301 Ga. 137, 141 (1) (800 SE2d 356) (2017). “It is established in Georgia that satisfaction of this fundamental principle requires that a [] indictment which does not recite language from the Code must allege every essential element of the crime charged.” *Everheart v. State*, 337 Ga. App. 348, 353 (3) (786 SE2d 866) (2016).

Applied here, count one failed the *Jackson* and *Cohen* standard because the particulars did not allege the specific intent requirement of Section 16-15-4. Specifically, count one alleged:

PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY
O.C.G.A 16-15-4, for the said accused, in the County of Fulton and State of Georgia, on the 7th day of June, 2012, did unlawfully, while

⁵ On review of a general demurrer, this Court is limited to the allegations of the indictment and requires the Court to treat the allegations as true. *State v. Cohen*, 302 Ga. 616, 633 (807 SE2d 861) (2017) (Nahmias, J., concurring in part and concurring specially in part).

associated with a criminal street gang, participate in criminal gang activity through the commission of an offense enumerated in paragraph (1)(J) of Code Section 16-15-3, to wit: crimes of violence including Conspiracy to commit murder, murder, felony murder, aggravated assault with a deadly weapon, and possession of a firearm during the commission of a felony; contrary to the laws of said state, the good order, peace and dignity thereof. [R. at 302].

Count one did not expressly allege specific intent to further the interests of the gang, only that Conner participated in criminal gang activity through the commission of the enumerated offenses. *Id.* “Criminal gang activity” is not defined to include specific intent to further the interests of the gang, O.C.G.A. § 16-15-3 (1) & (2), and our Supreme Court has described the specific intent element as a “fourth,” separate element that must be alleged and proven beyond a reasonable doubt. *See McFarland v. State*, -- Ga. -- (929 SE2d 208, 218-19) (3) (c) (No. S26A0403; April 21, 2026).

Likewise, the indictment’s generic use of the term “unlawfully” did not per se establish the Gang Act’s specific intent element. As the Supreme Court recently explained in *Lee*, “this provision does not make it a crime merely to commit one of the listed offenses while being a member of a gang.” 2026 WL 1390745, at *2. *Lee* is impactful here because division 2 (b) rejected an argument that the standard Gang Act language in the indictment, “which merely recite[d] the statutory language and allege[d] the specific crimes that Lee committed, [failed to] make clear to the jury that the State must prove that Lee committed the alleged crimes with the intent to further the gang’s criminal purposes.” *Id.* at *4. So it was here.

Applying *Lee*'s criticism that generic statutory language was insufficient to clarify the specific intent element, Conner could admit the particulars alleged and remain not guilty of count one. Therefore, the trial court erred when it overruled his general demurrer. Count one must be reversed and the sentence vacated.

II. The trial court erred when it denied Conner's motion for a conforming order, reversed its ruling in the Bradford order after the term of court expired, and refused a new trial based on the denial of Conner's right to introduce evidence of FBI Jackson's misconduct during the investigation.

"Conclusive presumptions of law are termed estoppels; averments to the contrary of such presumptions shall not be allowed." O.C.G.A. § 24-14-26 (a). Though not favored, the Code expressly includes estoppels in favor of: (b) (1) "a record or judgment unreversed[.]" *Id.* Under subsection (b) (1), the Bradford order was a "judgment unreversed" after it became final upon the State's withdrawal of its appeal. *Compare* [R. at 391] *with* § 5-6-38 (a). Conner expressly joined co-defendant Bradford's opposition to the State's motion *in limine*, urging that this was "reversible error." [T. Vol. 4 at 826]; [T. Vol. 5 at 841, 843]. Simply, the State was estopped from opposing error as to the Agent Jackson ruling.

"The doctrine of collateral estoppel precludes the readjudication of an issue of law or fact already adjudicated between the parties or their privies, where that issue is essential to the judgment." *Malloy v. State*, 293 Ga. 350, 354 (1) (a) (744 SE2d 778) (2013) (quoting *Jordan v. Board of Public Safety*, 253 Ga. App. 339, 340 (2002)). "[I]ssues previously litigated and adjudicated on the merits cannot be

relitigated even as a part of a different [] action." *Jordan*, 253 Ga. App. at 342. "Unlike *res judicata*, collateral estoppel does not require identity of the claim—so long as the issue was determined in the previous action and there is identity of the parties, that issue may not be relitigated, *even as a part of a different claim*." *Coffee Iron Works v. QORE, Inc.*, 322 Ga. App. 137, 139 (1) (744 SE2d 114) (2013) (emphasis in original) (quoting *Body of Christ Overcoming Church of God, Inc., v. Brinson*, 287 Ga. 485, 487 (2010)).

To collaterally estopp the State, Conner had to meet four requirements: (a) both proceedings must involve the same parties or privies; (b) the issue must have been actually litigated and determined in the first proceeding; (c) that determination must have been essential to the judgment; and (d) the party against whom the doctrine is asserted must have had a full opportunity to litigate the issue in question. *See generally Swain v. State*, 251 Ga. App. 110, 113 (552 SE2d 880) (2001).

The trial court erred in applying these factors. First, Bradford's motion for new trial and Conner's motion for new trial involved "privies" because Bradford represented Conner's interest in the defendants' joint objection when his motion for new trial challenged the trial court's ruling on the Agent Jackson issue. Both defendants sat at the same table, through the same trial, involving the same evidence, and joined the same objection to the State's motion *in limine*.

“Generally speaking, privies are those legally represented at trial.” *Pinkard v. Morris*, 215 Ga. App. 297, 298 (1) (450 SE2d 330) (1994). A “privy” is “one who is represented at trial and who is in law so connected with a party to the judgment as to have such an identity of interest that the party to the judgment represented the same legal right[.]” *See McCumber v. Petroleum Servs. Grp., LLC*, 333 Ga. App. 459, 461 (1) (773 SE2d 802) (2015) (quoting *Coffee Iron Works*, 322 Ga. App. at 139 (1)). There is no dispute that Conner and Bradford were both represented by counsel during the same jury trial. There is also no dispute that the Superior Court of Fulton County was of competent jurisdiction to adjudicate Bradford’s motion for new trial. To be sure, but-for a significant delay in the appointment of appellate counsel for Conner and Washington, these motions for new trial would have been heard together.

Given its fact-specific application, “there is no definition of privity that can automatically be applied to all cases involving the doctrine of collateral estoppel.” *Minnifield v. Wells Fargo Bank, N.A.*, 331 Ga. App. 512, 516 (771 SE2d 188) (2015). Yet, “privity may be established if the party to the first [proceeding] represented the interests of the party to the second [proceeding].” *Coffee Iron Works*, 322 Ga. App. at 141 (3).

Here, Bradford represented the defendants’ collective interest in the exclusion of misconduct and bias evidence regarding Agent Jackson because all defendants

joined this objection and argued emphatically that the State’s motion invited reversible error. [T. Vol. 5 at 821, 823]. Indeed, the order granting Bradford’s motion for new trial found that the trial court denied the “the defense” the right to impeach Agent Jackson, *not* merely Bradford. [R. at 343].

The order denying Conner’s motion for new trial did not analyze the privity factor; instead, it incorporated the order denying a conforming order. [R. at 459]. But this order did not apply the privity analysis from *McCumber* and ignored that binding Georgia analysis in lieu of a distinguishable, unpublished, California decision. [R. at 423] (citing *People v. White*, 2004 Cal. Appl. Unpub. LEXIS 619 *10 (Cal. App. 2004)). *White* had no application to Conner’s case because *White* involved the *government’s* attempt to use collateral estoppel against a criminal defendant *defensively*—a double jeopardy is a *defendant’s* right, not the governments. *White* did not bar (much less have relevance to) privity between co-defendants who were jointly tried in the same criminal case.

The trial court cited the prosecutor’s inability to locate a privity between criminal co-defendants, [R. at 423], but the *reason* for this dearth is explained by the State’s unprecedented attempt to reverse a trial court ruling that it voluntarily elected *not* to challenge.⁶ [R. at 391]. Although the privity question may be new, collateral

⁶ The State’s persistent attempts to block Conner from the benefit of the trial court’s unchallenged ruling on the defendants’ joint objection is at odds with § 24-14-26 (b) (1).

estoppel in the criminal context is not. *See Malloy*, 293 Ga. at 354 (1) (a). On the merits, Conner satisfied the privity factor.

The trial court's second error was finding that the Agent Jackson issue "was not litigated on the record as part of Bradford's motion." [R. at 423]. Yes, it was. *See* [R. at 343, n. 1.] ("Bradford submitted a supplemental brief in support with exhibits attached, while the State did not submit a supplemental brief advising the Court that it would rely on the argument made at the pre-trial hearing on its motion in limine . . ."); *see also* [MT Aug. 31, 2016] (open court hearing with both parties present and represented discussing Bradford's enumerations of error).

Though the State in hindsight may disagree with former counsel's strategy to withdraw its appeal, the State was given an opportunity to supplement its argument (orally, with evidence, or in writing) and abandoned it. Compounding this error, the trial court applied the wrong standard—"litigation on the record" was not the issue. Rather, the legal standard was whether the Agent Jackson issue was "actually litigated and determined in the first proceeding." *Malloy*, 293 Ga. at 354.

It was. The State was given notice of a hearing and the opportunity to be heard; appeared at this hearing through counsel; and strategically elected not to present evidence nor supplement the arguments at the motion in limine. After this sequence, Bradford's motion was taken under advisement and the order (which was

not appealed) resolved the Agent Jackson issue against it. O.C.G.A. § 5-6-38 (a). Thus, Conner established the “actually litigated and determined” factor.

Conner satisfies the third collateral estoppel factor because the trial court’s resolution of the Agent Jackson issue was essential to the order granting Bradford a new trial. *Cf., Allen v. Santana*, 303 Ga. App. 844, 847 (1) (695 SE2d 314) (2010) (ALJ determination of whether defendant properly cancelled title to vehicle not essential to foreclosure judgment). Unlike in *Allen*, the Bradford order mentions no other legal issue and granted the motion based on the severe harm from this conceded error. [R. at 343-56]. Thus, the Agent Jackson issue was clearly “essential.”

Finally, the State (whom Conner seeks to estopp) had a full and fair opportunity to litigate the Bradford order—even the trial court found that the State withdrew its appeal as a part of a negotiated agreement to resolve Bradford’s case. [R. at 422] (“ . . . the Court’s legal conclusions were resolved only by a negotiated agreement between Bradford and the State.”). Cases that have failed to find this factor involve a trial court’s exclusion of evidence, or impairment of a parties’ opportunity to participate in the litigation of the issue in some way. *See generally Ga. Neurology & Rehabilitation, P.C. v. Hiller*, 310 Ga. App. 202, 206 (1) (712 SE2d 611) (2011) (no full litigation opportunity where trial court in prior contempt action did not permit the introduction of plaintiff’s evidence of stolen funds). Those cases do not apply here.

This was a bargained-for-exchange. And the State's opposition to Conner's motion for new trial was (and *is*) "buyer's remorse," long after the Bradford order became final. § 5-6-38 (a). That the State voluntarily withdrew its appeal and thereby abandoned its opportunity to challenge the Bradford order does not mean that it did not have a full opportunity to litigate the Agent Jackson issue. It did. That opportunity was strategically waived.

Accordingly, because Conner has shown all four factors, the trial court erred when it failed to estopp the State from opposing the final ruling it strategically chose *not* to contest. § 24-14-26 (b) (1). To be sure, the trial court had no jurisdiction to reconsider the Bradford order because the term of court had expired. *See e.g., Moon v. State*, 287 Ga. 304 (696 SE2d 55) (2010) (In criminal cases, "a trial court's inherent power to revoke interlocutory rulings ceases with the end of the term" unless a motion for reconsideration is filed during the same term as the ruling at issue).

Beyond its extrajurisdictional act, the trial court was wrong on the merits to reconsider. Fundamentally, "[t]he state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury." O.C.G.A. § 24-6-622. And even if the prosecution declined to call Agent Jackson in its case-and-chief, the trial court could not bar the defendants from calling Jackson in the defense case, or to restrict their thorough cross-examination of the Sandy Springs detectives who interacted with Agent

Jackson and made decisions based on information from the FBI. As the defendants argued, and the trial court found, Agent Jackson's misconduct was relevant to the defense theory that Jackson attempted to steer the investigation away from Chulpayev and towards Bradford, Conner, and Washington.

This error was not harmless. Although errors restricting the admission of evidence and the right of cross-examination are subject to the harmlessness and beyond a reasonable doubt standards, *see Alvarez v. State*, -- Ga. App. -- (925 SE2d 210, 215) (No. A25A1205; Jan. 7, 2026), the State cannot show this error did not contribute to the verdict. At the motion-for-new-trial hearing, trial counsel gave a substantial offer of proof that Agent Jackson's misconduct was at the center of the defense strategy; that the trial court's ruling "hamstrung" the defense; and that, but-for the trial court's ruling, trial counsel's summation and cross-examination strategy would have been drastically different. *See* [MNT June 5, 2025 at 16-23, 28].

First, the evidence against Conner was not overwhelming, as best shown by the verdict acquitting him of Vernell's murder, aggravated assault, and possessing a firearm during the homicide. [R. at 297, 309]. Second, none of the hospital witnesses identified Conner at trial and their circumstantial descriptions of the shooters were inconsistent with obvious details of Conner's appearance. Likewise, Cell tower records could not place Conner at the hospital when Vernell was shot,

only in metro proximity, and no physical evidence corroborated his presence or the participation of a second shooter.

Therefore, because Conner was entitled to the error finding from the Bradford order, and the erroneous exclusion of Agent Jackson's misconduct was not harmless beyond a reasonable doubt, this Court must reverse. A new trial is required.

III. The trial court erred in denying Conner's motion to suppress "illegally obtained evidence," challenging the warrantless acquisition of Conner's cell phone records and a subsequent search warrant.

Decided after the Alabama order for Conner's cell site records, the Supreme Court of the United States has held that a person holds a reasonable expectation of privacy in the aggregate of cell phone location records for at least seven days. *Carpenter v. United States*, 585 U.S. 296 (138 S.Ct. 2206) (2018). Citing *Carpenter*, the trial court's order denying Conner's motion for new trial agreed that the Stored Communication Act procedures used by the Alabama investigators were subsequently invalidated. [R. at 459]; *see* [Def.'s MTS Ex. 1] (fax to AT&T wireless for records based on sealed order from the Fifteenth Judicial Circuit of Alabama). Notwithstanding, the trial court admitted the cell records based on a "good faith" exception to the exclusionary rule. That was error. This exception did not apply.

Recent decisions applying *Carpenter* to Stored Communication Act cell record subpoenas (issued *pre-Carpenter*) have recognized a "good faith" exception, *see Outlaw v. State*, 311 Ga. 396, 400 (858 SE2d 63) (2021); *Lofton v. State*, 310

Ga. 770, 783 (854 SE2d 690) (2021), but the exception requires “objectively reasonable reliance on binding precedent that is later overruled.” *Id.* That did not occur here.

Here, the “binding precedent later overruled” was the Federal Stored Communications Act, 18 U.S.C. § 2703 (c) & (d), which then authorized the release of cell phone information without a search warrant. But unlike in *Lofton* and *Outlaw*, where the validity of the SCA orders were not disputed, Conner *does* dispute the Alabama Deputy District Attorney’s compliance with the SCA.

Here, the Alabama order relied on subsections (c) & (d). [Def.’s MTS Ex. 1 at 2, 4]. Subsection (d) authorized disclosure “only if the governmental entity offers specific and articulable facts showing there are reasonable grounds to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.” *Id.*

Applying the standard from *Lofton* and *Outlaw*, the Alabama Deputy District Attorney who moved for the order did not objectively rely on the SCA because no such “specific articulable facts” were presented to the Alabama magistrate judge. [Def.’s MTS Ex. 1 at 2]. In the motion’s “reasonable grounds” paragraph, the Alabama DDA proffered pure speculation without a factual basis.

For example, the motion proffered that the requested records “*may lead*” to information regarding Conner, or some of his associates,” . . . because “the

investigation has uncovered information that Eldorado Red’s street gang, in which Conner and Williams are members, *may have killed* Shackleford and *may also have been involved* in the murder of a victim at a hospital parking deck at 1000 Johnson Ferry Road, Atlanta, Georgia on 6/7/12.” *Id.* (emphasis added). Beyond the use of speculative language without a nexus to a target offense, there was no factual basis from which the Alabama district judge could discern why the DDA believed Conner “may be” involved.

This was not isolated negligence. It was a disregard for, and a wholesale failure of compliance with, the “specific articulable facts” requirement by the Alabama state actors. *See e.g., State v. Gunsby*, 370 Ga. App. 748, 749-52 (899 SE2d 299) (2024). In *Gunsby*, this Court affirmed suppression of cell site location data obtained through an invalid “exigent circumstance” request pre-*Carpenter*. *Id.* There, the Court noted the good faith exception to the exclusionary rule, but affirmed suppression because trial court findings undermined the detective-applicant’s reasonable belief that her conduct was lawful. *Id.* at 752-53. So it is here.

Similar to *Gunsby*, no district attorney or magistrate judge reading § 2703 (d) could reasonably believe that the “bare bones” speculation in the “motion for telephone records” complied with this statute. As a result, the *Lofton/Outlaw* good faith exception did not apply, and the trial court erred in its holding to the contrary. [R. at 459-60, ¶ 4].

The trial court erred in finding that the Fulton County warrant was an independent source. [R. at 313-14]. Although the trial court's order denying the motion for new trial did not engage the subsequent Fulton County search warrant, *see* [State's MTS Ex. 3] (13SC123643 applied for and granted July 2, 2014), as the pretrial order did, this warrant failed the two-step independent source analysis from⁷ *Tatum v. State*, 319 Ga. 187, 191 (2) (a) (903 SE2d 109) (2024) (discussing *Murray v. United States*, 487 U.S. 533, 537 (II) (108 S.Ct. 2529) (1988) and explaining the independent source doctrine applies to "evidence initially discovered during, or as a consequence of, an unlawful search, but later obtained independently from activities untainted by the initial legality."). *Tatum* is dispositive here.

Under *Tatum*, Georgia courts apply a two-step analysis for application of the independent source doctrine. First, the Fulton County search warrant affidavit must be reviewed after excising any tainted factual proffer. Second, if the redacted affidavit is sufficient to establish probable cause, the Court must determine "whether the officer's decision to obtain a search warrant was prompted by what he observed during the illegal entry." 319 Ga. at 193-94. The question is, "whether the officer would have sought the warrant even if he had not engaged in the prior unlawful

⁷ Notably, the related "inevitable discovery" exception is not implicated here because there is no dispute that investigators were not actively pursuing a search warrant for the cell phone records at the time of the Alabama phone record order. *See Mobley v. State*, 307 Ga. 59, 77 (4) (834 SE2d 785) (2019) (rejecting inevitable discovery where no evidence showed law enforcement's concurrent pursuit of independent lawful means at time of illegality). This warrant was obtained *precisely because* Conner challenged the validity of that Alabama SCA order.

search.”⁸ *Id.* (citing *Noriega*, 676 F.3d at 1260-61 (III) (C)). This Fulton County warrant failed both steps.

Applying *Tatum*’s first step, excising the tainted information eliminates the probable cause nexus to Conner’s phone number because the only proffered factual basis linking Conner to (334) 354-3730 was obtained through “researching reports, field notes.” [State’s MTS Ex. 3 at 391]; *see also* [R. at 236, 246] (investigative notes from White proffer, re: call with Conner). The reports and field notes referenced by the affiant were derivative of the Alabama SCA order because the cell records obtained through the invalid order enabled the discovery of the 3470 number, i.e., that Conner was linked to 3470.

Thus, while this affidavit proffered a probable cause nexus between Conner and the murder via the informant, there was no independent nexus to associate Conner with the 3470 number. Accordingly, the Fulton County warrant failed.

Alternatively, however, the Fulton County search warrant failed *Tatum*’s second prong because the July 2, 2014 warrant application (almost two years after the Alabama SCA order) was prompted by the unlawful Alabama order. Timing

⁸ In *Tatum*, the Supreme Court reconciled prior Georgia cases with Eleventh Circuit and Supreme Court of the United States precedent. *Tatum* held, “like the Eleventh Circuit, that if the State would have sought the warrant even without the prior illegality, then its decision was not prompted by the unlawful prior search. But if the State would not have sought the warrant but for its prior unlawful activities, then the warrant was so prompted and the evidence is not admissible under the independent source doctrine.” *Id.* at 195 (4) (a) (collecting cases).

was significant because the affiant applied for the Fulton County warrant shortly after the Supreme Court decided *Riley v. California*, 573 U.S. 373 (2014).

When *Riley* was decided, the State and detectives had already reviewed the SCA production from the unlawful Alabama order and knew what those records contained. Effectively conceding that the Alabama procedure was both invalid and unreasonable under *Riley* (and, fairly inferred, the SCA), the affiant applied for the Fulton County warrant to salvage the use of the cell records it had already obtained.

The affidavit did not proffer any facts beyond that available to the State in 2012—at the time of the SCA order. *See State v. Thurston*, 368 Ga. App. 667, 670-71 (888 SE2d 362) (2023) (holding a one-year-delayed, second search warrant was not an independent source to salvage an initial invalid warrant for a defendant’s cell phone because the second warrant “failed to offer any separate source or other evidence that did not exist in 2020 to serve as an independent, lawful basis to use a warrant from after-the-fact to justify the earlier search.”). Following *Thurston*’s reasoning, the Fulton County warrant was obtained “solely as an attempt to overcome the constitutional violation which occurred in 2012[.]” *Id.* at 672.

Applying *Tatum*, the trial court erred in applying the independent source doctrine. Thus, the invalid search of Conner’s cell records violated the Fourth Amendment and the records were due to be suppressed. The trial court erred.

Here, the State cannot show that the trial court's failure to suppress Conner's cell records was harmless beyond a reasonable doubt because the prosecutor's closing argument relied heavily on the tower-location data showing the movement of Conner's phone. Given the State's reliance on the tower records, and incorporating the other evidence to show harm set forth in enumeration two, the trial court's error is reversible. A new trial is therefore required.

IV. The trial court erred in denying Conner's objections to the introduction of rap lyrics and a music video for "100 shooters."

Conner moved to exclude State's Ex. 320, a disk containing the music video of a rap song "100 shooters." [T. Vol. 5 at 852-57]. Interpreting Rule 403 in the context of social media evidence, our Supreme Court in 2024 reversed a murder conviction for the State's strikingly similar prejudicial use of a 33-second clip from a rap music video that showed the defendant holding a semi-automatic pistol with an extended magazine. *Baker*, 318 Ga. at 140-53 (2). Though *Baker* was decided after Conner's trial, "an appellate court [] applies the law as it exists at the time its opinion is rendered[.]" *Pyatt v. State*, 298 Ga. 742, n.7 (2016) (quoting *Elmore v. State*, 269 Ga. 528, 529 (4) (1998)). Thus, *Baker* applies here.

Conner's position is simple: *Baker* controls and the trial court abused its discretion under Rule 403 when it admitted State's Ex. 320. In *Baker*, the defendant was convicted of murdering a club security guard who had earlier refused him reentry after a concert he performed. When the defendant was refused reentry, a

fight with the guard ensued, and the defendant and his friend left the club to a breezeway. Shortly thereafter, the security guard was shot.

Several lay witnesses testified the shots came from the breezeway where the defendant left and that the last person seen walking through before the shooting was wearing a white shirt, matching the defendant. One witness, Orr-Oglesby, positively identified the defendant several times as the gunman, both before and during trial. *Id.* at 436. *Baker* testified in his own defense, conceded both being present at the club and being refused entry at the end of the concert, but denied shooting.

To show the defendant's access to firearms, to "complete the story," and to show his relationship with Crawford's entourage, the prosecution admitted a 33-second-clip of a rap music video ("ghetto angels") that depicted the defendant brandishing a pistol at the camera.

Baker held that, although this video clip was relevant to a triable issue under Rule 401, any probative value was substantially outweighed by the risk of undue prejudice. *Id.* at 443-45. *Baker* explained that the video clip – despite its short length – had a significant prejudicial effect because it portrayed Baker "as a violent gunman." *Id.* at 444. Conversely, the probative value of the prosecution was minimal because the defendant's presence in the nightclub entourage was undisputed; the video was not used by the detective to prove Baker's identity as the

gunman; and the video only minimally showed the defendant's access to a .45 caliber pistol because there was no proven time link. *Id.* at 444-45.

Here, more egregious than *Baker*, the music video in State's Ex. 320 were not short—an entire video as opposed to a 30-second clip. Like the clip in *Baker*, the “100 shooters” video was highly prejudicial because “Da Boi” was mentioned, which was used to link Conner directly with Bradford and the BGM gang. [T. Vol. at 3089]. In State's Ex. 320, firearms are similarly brandished towards the camera—in a music video that could be perceived as venerating gun violence. Thus, if there is any material distinction from *Baker* in degree of prejudice, it was a *greater* degree of prejudice to Conner.

Significantly, other *Baker* factors that caused diminished probative value are also present here. For example, State's Ex. 320 could not have been offered to prove Conner's identity at the hospital because there was no “signature similarity” between the music video and the manner of the shooting. *See e.g., Brooks v. State*, 298 Ga. 722, 725 (783 SE2d 895) (2016) (heightened similarity legal standard for evidence offered to prove identity). No similarity was shown because the video did not depict a similar environment, an assassination, nor was there any testimony to link the type of firearm used against Vernell to the guns depicted by State's Ex. 320.

The State argued that State's Ex. 320 proved Conner's association with Bradford, but this point was not strongly disputed. This argument also suffered from

the same “time” flaw as the music video in *Baker*: State’s Ex. 320 was not shown to be filmed significant in time to Vernell’s shooting. As *Baker* held, State’s Ex. 320 did little to prove Conner’s access to Bradford, BGM, or a specific weapon at or near the time of the shooting. 318 Ga. at 444.

Also like in *Baker*, no other prosecutorial purpose showed significant need for this music video. Conner’s association with Bradford was proven through call log records, and Conner raised no affirmative defense for the music video to rebut. The ultimate issue was identity.

Instead, State’s Ex. 320 proved Conner’s propensity for gun violence. Because the State had no substantial need for this video, and the exhibit did not meet the heightened similarity standard to prove identity, the trial court abused its discretion by admitting State’s Ex. 320 over objection.

“The test for determining nonconstitutional harmless error is whether it is highly probable that the error did not contribute to the verdict.” *Jivens v. State*, 317 Ga. 859, 863, (896 SE2d 516) (2023) (citation omitted). Accordingly, the error in admitting the rap music video into evidence may be deemed harmless only if it is highly probable that the error did not contribute to the verdict. *Id.*

Here, the State cannot meet its burden to show harmlessness from the trial court’s abuse of discretion. Unlike Orr-Oglesby’s eye-witness identification of the defendant in *Baker* as the shooter, no witness identified Conner. As evidenced by

the jury's acquittals of the shooting counts, significant questions, and length of the deliberations, the prosecution's theory was not wholesale accepted and the remaining evidence against Conner is not overwhelming.

Other circumstantial evidence supported Conner's defense and was never reconciled by the prosecution theory. *See* [Def.'s Ex. 1]. Thus, because the abuse of discretion was not harmless, this Court must reverse. A new trial is required.

V. Trial counsel rendered ineffective assistance that prejudiced the verdict.

"To prevail on an ineffective assistance claim, a defendant must show both that counsel rendered deficient performance and that the deficient performance prejudiced his defense." *Barrett v. State*, 292 Ga. 160, 166 (3) (733 SE2d 304) (2012) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). *Strickland's* first prong requires Conner to show that trial counsel was deficient in performing in "an objectively unreasonable way considering all the circumstances." *Romer v. State*, 293 Ga. 339, 344 (3) (745 SE2d 637) (2013). To meet the second prong, Conner must show "a reasonable probability that, absent counsel's professional errors, the result of his trial would have been different." *Barrett*, 292 Ga. at 166.

Under Georgia law, *Strickland's* prejudice prong considers the combined effect of trial counsel's errors. *See Debelbot v. State*, 305 Ga. 534, 544 (2) (826 SE2d 129) (2019). The collective prejudice from counsel's errors is then considered together with the prejudice from any trial court errors. *State v. Lane*, 308 Ga. 10, 17

(1) (838 SE2d 808) (2020) (“We hold that the proper approach [] is to consider collectively the prejudicial effect, if any, of trial court errors, along with the prejudice caused by any deficient performance of counsel.”).

Applying *Strickland* and *Lane*, trial counsel performed deficiently in four ways, the collective prejudice from which, together with the trial court error in enumerations two and three, prejudiced the outcome. Specifically, trial counsel failed to (a) generally demur count one after jeopardy attached; (b) request jury instructions on identification; and (c) except to the jury instruction on conspiracy as a constructive amendment of count two.

A. Failure to file a general demurrer to count one (participation in criminal street gang activity) after jeopardy attached.

To the extent that trial counsel failed to join co-defendant Bradford’s general demurrer, this omission was ineffective. At the motion-for-new-trial, trial counsel testified that his intent was to join the demurrer to this count and he did not strategically abandon that position. [MNT at 23-24].

A criminal defense attorney who fails to file a meritorious general demurrer performs deficiently. *Moss v. State*, 322 Ga. 757, 766 (5) (c) (922 SE2d 56) (2025) (citing *State v. Heath*, 308 Ga. 836, 839 (2020)). Under *Heath*, omission of an apt general demurrer is prejudicial even where the defendant had notice of the charges. *Id.* at 839-41. “A general demurrer may be raised after jeopardy has attached and at any time during trial.” *Id.* at 840, n. 2.

On the merits of this omitted demurrer, Conner incorporates the argument set forth in enumeration one. Should this Court find that Conner failed to join Bradford's demurrer, that omission was ineffective because count one failed to state the offense alleged and Conner received a separate sentence for that count.

B. Failure to request the pattern jury instructions on identification, Conner's sole trial defense.

The ultimate issue for the jury was identity. During closing argument and at the motion-for-new-trial hearing, trial counsel made argument clearly demonstrating that Conner's trial defense was misidentification, to wit: that he was not the man observed in the hospital parking deck when Vernell was shot. Yet, no request to charge was filed for identification, 1.35.11 of the Criminal Pattern Jury Instructions, Vol. II: Criminal Cases (4th ed. 2007).

At the motion-for-new-trial hearing, trial counsel testified that this instruction was consistent with his trial defense and offered no strategic reason for failing to request this charge. [MNT June 5, 2025 at 23-24]. Without a strategic basis for the pattern instruction underlying Conner's trial defense, this omission was deficient. Applied to a case where lay witnesses gave incomplete, circumstantial descriptions of the suspects they briefly observed, omission of the identification factors harmed Conner by failing to ensure the jury's fair consideration of the defense.

C. Failure to object to the Court’s jury instructions that defined conspiracy as a constructive amendment of count two.

“An indictment cannot be materially amended after the grand jury has returned the indictment into court; any subsequent amendment by the trial court or prosecution that materially affects the indictment is void and cannot serve as the basis for a conviction.” *Morris v. State*, 310 Ga. App. 126, 128 (2) (712 SE2d 130) (2011). “An amendment to the indictment can be actual or constructive; a constructive amendment occurs when the essential elements of the offense contained in the indictment are altered to broaden the possible bases for conviction beyond what is contained in the indictment as a result of erroneous jury instructions or a prosecutor's statements to the jury.” *Nix v. State*, 354 Ga. App. 47, 56 (839 SE2d 687) (2020).

Applied here, count two was amended by an untailored jury instruction defining criminal conspiracy that did not limit the jury’s consideration of that offense to the particulars alleged, to wit: traveled to Northside Hospital . . . and located and shot Melvin Vernell, III. *Compare* [T. Vol. 19 at 3750] *with* [R. at 303]. Significantly, the trial court did *not* give the pattern instructions on form of the verdict to limit the jury’s consideration of this offense as alleged in the indictment. [T. Vol. 19 at 3750-58].

Trial counsel did not except to this overbroad definition. [T. Vol. 19 at 3760]. At the motion-for-new-trial hearing, trial counsel testified that he had no strategic

reason for failing to except and that it did not assist Conner's identity defense to expand the jury's consideration of the conspiracy. [MNT June 5, 2025 at 26-27].

Thus, because trial counsel without an objectively reasonable strategy failed to except to a constructive amendment of count two, for which Conner was separately sentenced, ineffective assistance is established.

D. *State v. Lane*: cumulative prejudice.

Under *Lane*, this Court must consider the prejudice from trial counsel's aforementioned deficiencies together with the trial court error in enumeration two. 308 Ga. at 18 (1). In *Lane*, our Supreme Court overruled prior precedent considering prejudice from trial court error in isolation and held "the proper approach instead is to consider collectively the prejudicial effect, if any, of trial court errors, along with the prejudice caused by any deficient performance of counsel." *Id.*

Applying *Lane*, the cumulative prejudice from the trial court's errors enumerations one, three, and four, together with trial counsel's deficiencies, creates a substantial probability of a different verdict. Specifically, the general demurrer would remove count one, which would not only eliminate a 15-year consecutive sentence, but also narrow the State's scope for extrinsic evidence, obviating the application of Section 16-5-9. Likewise, reversing the suppression order would eliminate the cell tower data, which the prosecutor relied on significantly in his theory of Conner's presence and participation in the shooting. Without the cell tower

data and phone records, and with a properly tailored jury instruction defining (and limiting) the criminal conspiracy alleged in count two, there is a reasonable probability that the jury would have accepted Conner's defense as to count two. With a not guilty verdict as to count two, and a demurrer eliminating count one, Conner's sentencing outcome is dramatically reduced by twenty-five years.

CONCLUSION

For the foregoing reasons, Maurice Dewayne Conner respectfully requests this Court to **VACATE** his conviction and **REVERSE** the denial of his motion for new trial and **REMAND** this case to the Superior Court of Fulton County with instructions that a **NEW TRIAL** be granted.

Respectfully submitted this 8th day of July, 2026.

/s/ Matthew K. Winchester

Matthew K. Winchester

Georgia Bar No. 399094

Appellate counsel for Conner

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing OPENING BRIEF upon Kevin Armstrong, Assistant District Attorney for Fulton County by filing the foregoing via the Court of Appeals E-Fast service, and by depositing the same in the U.S. Mail with adequate postage affixed to insure delivery, addressed to Fulton County District Attorney, 136 Pryor Street, third floor, Atlanta, Georgia 30303.

Pursuant to Court of Appeals Rule 24 (f), undersigneds hereby certify that this brief does not exceed the criminal case word limit imposed by Rule 24 (a).

This 8th day of July, 2026.

/s/ Matthew K. Winchester
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Court of Appeals of the State of Georgia

ATLANTA, June 26, 2026

The Court of Appeals hereby passes the following order

A26A2193. MAURICE DEWAYNE CONNER v. THE STATE.

The APPELLANT'S motion for AN EXTENSION OF TIME in which to file an enumeration of errors and brief in the above-styled case is hereby GRANTED until 07/08/2026.

The appellee's brief shall be filed within 20 days after the filing of the appellant's brief.



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, June 26, 2026.

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Christina Coley Smith, Clerk.