

In the Court of Appeals of the State of Georgia

MAURICE CONNOR,	)	
<i>Appellant,</i>	)	Case A26A2193
	)	
versus	)	On appeal from
	)	Fulton County
THE STATE OF GEORGIA,	)	Superior Court,
<i>Appellee.</i>	)	Case 13sc119129.

BRIEF OF APPELLEE

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

KEVIN ARMSTRONG 987456
Deputy District Attorney

Office of the District Attorney
136 Pryor Street SW, Third Floor
Atlanta, GA 30303
Cell (404) 358-7599
kevin.armstrong@fultoncountygga.gov

Part One
BACKGROUND INFORMATION

NOTE ON CITATIONS

Citations to the record on appeal are marked “V” followed by the volume number set by this Honorable Court, followed by the page number. For transcripts, the page numbers used are those supplied by the court reporter.

NOTE ON RECORD

In preparing this brief, the undersigned has noticed two omissions. **(1)** The transcript of a relevant pretrial hearing appears to have been omitted from the record on appeal. The hearing at issue was held on July 28, 2014, and was filed with the Clerk on October 16, 2014. This transcript is relevant to Connor’s claims regarding his motion to suppress. A technological glitch is likely to blame, as the undersigned was unable to save a copy or print it from Fulton County’s case management system. **(2)** Codefendant Bradford’s August 04, 2014 letter brief, which first asserted the claim Connor seeks to adopt and states its original claim, also appears to have been omitted.

The undersigned represents that he will endeavor to have the Fulton County Clerk supplement the record with that transcript.

For this brief, the undersigned has cited to the missing transcript as “Transcript 2014-07-28,” followed by the page number(s), and the missing letter brief as “Bradford Letter Brief,” followed by the page numbers(s).

STATEMENT OF THE CASE

Introduction. Appellant **Maurice Connor** and Deandre Washington were Alabamans hired by Gary Bradford to kill a man Bradford believed had stolen bulk marijuana. Connor and Washington traveled to Georgia for that purpose and killed that man in the parking deck outside of a maternity ward shortly after the birth of that man’s child. When they reported to Bradford afterwards, Connor smiled as he described what they had done.

Charges. Following the June 07, 2012 shooting death of **Melvin Vernell III**, the State obtained an indictment charging multiple individuals with offenses related to that event, including Connor, Washington, and Bradford. V02 04-12.

Trial. Connor, Washington, and Bradford were tried together in July and August 2014. At the conclusion of that trial, the jury convicted Connor of gang participation, conspiracy to commit murder, and possession of a firearm by a convicted felon; convicted Bradford of gang participation and conspiracy to commit murder; and convicted Washington of all charges, including gang

participation, conspiracy to commit murder, malice murder, felony murder, aggravated assault, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. V27 3786-3789.

Motion for new trial. Within 30 days of the sentencing order entering the Clerk's file, Connor filed a motion for new trial—just not under this indictment number. Connor filed his motion under the earlier indictment. See V03 469-474. Connor amended his motion nearly fifteen years later. V03 430-433. The State responded. V03 440-455. The superior court held a hearing on that motion on June 05, 2026. V33 01. It then issued a written order which denied the motion. V03 458-463.

Appeal. Connor timely filed a notice of appeal within 30 days of that order. V03 01-03. This Court docketed the case, and the Brief of Appellant followed. On July 30, 2026, this Honorable Court graciously granted the State a short extension of time in which to file its brief. This Brief of Appellee now follows.

STATEMENT OF RELEVANT FACTS

The evidence established that Melvin Vernell III was murdered in a hospital parking deck. Vernell suffered from five gunshot wounds, all to parts of the right side of his body, including his neck, shoulder, chest, arm, and thigh. V23 3185-3198. The gunshot to his

chest was the cause of his death. V23 3205. Although more evidence was admitted than what follows, the following simply recounts sources of evidence identifying Connor as one of the coconspirators and as the shooter.

Decensea White testified that Gary Bradford believed Vernell was responsible for a robbery of his drug courier and that shortly before the murder Bradford, along with Maurice Connor and Deandre Washington, met with White. V17 1997-1999. To retaliate and get the drugs back, the men tracked Vernell to multiple locations, including a hotel, where Washington and Connor remained to stake it out until people looked at them funny. See V17 2002-2010. White testified that the next day Washington and Connor were armed; that the men (including driver Calvin Johnson) all tracked Vernell to a hospital parking deck, where they found Vernell's vehicle; that Bradford ordered the men to kill him there; and that White, Bradford, and Johnson left to go eat, then returned to Bradford's home. V17 2010-2017. White testified that Bradford received a call, said they did it, and told Johnson to go pick them up as they were ditching their car. V17 2018. White testified that when they arrived at the home, Washington jumped out of Connor's car to explain how they waited for Vernell and how he shot Vernell, and did so with an excited demeanor. V17 2019-2021. They then discussed compensation. V17 2021.

Driver **Calvin Johnson** was a courier between White and Bradford's people in Alabama, V20 2456-2458, and during a run in June 2012 Johnson was robbed of Bradford's marijuana. T20 2463-2467. A few days later, Johnson drove White and Bradford to a home in Alpharetta while being followed by a Nissan occupied by Connor and another man. V20 2474-2478. Johnson described Connor as being with a shorter man he did not know. V20 2476-2477. The next day, Johnson testified that Connor and that shorter man caravaned behind Johnson as the men all went to the hospital parking deck where the murder occurred and that Connor and the shorter man remained there after Johnson drove Bradford and White to another location to eat. V20 2481-2487, 2499. Later that day, Johnson was told to and did pick up Connor and that other man from an area in Smyrna, and brought them to where Bradford and White were, and the four of them spoke. V20 2488-2489, 2538. Although not part of that conversation, Johnson overheard Connor repeatedly say "pow" loudly while smiling, and heard someone else say "they...can't f*ck with me" or something similar. V20 2489-2490, 2546. In court, Johnson identified Washington as the person who was with Connor. V20 2556. Indeed, as separately established, Washington was about five inches shorter than Connor. See V21 2664-2665.

The day before the murder, on June 06, 2012, at 6:35 EST / 5:35 CST, a Montgomery officer cited Connor for a traffic violation while Washington was in the car with him. V20 2661-2665; SE45 (citation). This was while Connor was on his way to Atlanta, and added weight to White's and Johnson's identification of Washington as the man with Connor.

On November 8, 2012, Connor made a knowing and intelligent waiver of his rights and spoke with Det. JT Williams and others. V21 2665-2670, 2709-2710. Connor appeared uncomfortable, rocked back and forth, and rubbed his hands. V21 2670. Williams asked Connor what his cell phone number was in June 2012 and Connor responded that it was a number ending in x3730. V21 2671. Connor said that at the time of the murder he was in Columbus, Georgia, for a funeral of his Uncle Ron. V21 2672. Connor was unable to give any additional information about his uncle beyond that first name and was unable to provide Det. Williams with any other information about his trip, including the address for where he stated or the name or phone number for anyone who was there. V21 2672-2673. Williams did not arrest Connor at that time. V21 2674.

Officers obtained Connor's cell phone records associated with number ending x3730 for June 6 through June 11, 2012. V21 2725; SE21. These records corroborated White's and Johnson's testimony as to Connor's movements and whereabouts at all time relevant to

the murder, as well as his movement consistent with the traffic stop.

Six cartridges were found at the scene of the murder, all of which were fired from the same gun, which was .357 Sig. V23 3144-3145. Ten jacket fragments were found, eight of which were suitable for testing, and those eight were fired from the same gun, which was either a Glock 9mm or a .357 Sig. V23 3150-3151, 3162-3163.

Further, evidence identified Connor, Washington, and Bradford as members of the BGM gang. See, e.g., V23 2989, 2992-2995, 3092-3093.

That is, the evidence included (but certainly was not limited to): the direct testimony of co-conspirator Decensea White implicating Connor in the conspiracy; the direct testimony of Bradford's driver Christopher Jordan, who placed Connor with the other conspirators as they were effectuating the conspiracy; objective evidence from a traffic stop tying Connor to Washington in their trip from Alabama; and Connor's own cell site location information, which showed not only his travel from Alabama to Atlanta the day before the murder and his trip back the night after, but showed his location in proximity to all the major locations to which he was tied as part of the conspiracy.

Part Two

ARGUMENT & CITATION TO AUTHORITY

I.

Count 1 of the indictment was not subject to a general demurrer as it appropriately alleges the crime using the language of the Code section.

Count 1 charged Connor and others with the offense of participation in criminal street gang activity. Connor claims the superior court should have granted a general demurrer because Count 1 did not include *extra-statutory* language. This is incorrect. Count 1 of the indictment stated the offense in the terms and language of this Code, and as such the Code declares it good against a general demurrer. There was no error.

A.

The Code provides that “[i]t shall be unlawful for any person...associated with a criminal street gang to...participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.” OCGA § 16-15-4 (a) (emphasis added).

Tracking the language of the Code, Count 1 alleged that Connor committed participation in criminal street gang activity as he “did

unlawfully, while 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,” which offenses Count 1 went on to name. V2 07.

Count 1 stated the offense using the exact terms and language of Section 16-15-4 (a).

B.

The Code holds that “[e]very indictment of the grand jury which states the offense in the terms and language of this Code...shall be deemed sufficiently technical and correct.” OCGA § 17-7-54 (a). Where (as here) a count tracks the language of the Anti-Gang Act, a general demurrer must be denied. *State v. Ramirez-Herrera*, 306 Ga. App. 878 (2010);¹ *State v. Hood*, 307 Ga. App. 439, 442, (1) (2010) (count which “substantially tracks the language of OCGA § 16-15-4 (a)” is “sufficient to withstand a general demurrer”). As it stated the offense in the terms and language of the Code, Count 1 was not subject to a general demurrer. Connor’s claim is meritless.

¹ The Supreme Court has questioned *Ramirez-Herrera* on an unrelated point regarding appellate procedure. See *State v. Outen*, 289 Ga. 579, 581 (2011).

C.

Connor faults Count 1 for not including explicit language about an intent to further street gang activity. That language comes in the first instance from *Rodriguez v. State*, 284 Ga. 803, 807 (1) (2009). But the Supreme Court in *Rodriguez* did not **add** an element to the Code. As that Court often notes, it “does not have the authority to rewrite statutes” and “can not add a line to the law.” *State v. Fielden*, 280 Ga. 444, 448 (2006) (citations omitted). Instead, the intent element Connor refers to is literally provided by the Code’s own text. As declared by the Supreme Court, the requirement of a “nexus between the act and an intent to further street gang activity...is provided by use of the preposition ‘through’ in OCGA § 16-15-4 (a).” *Rodriguez*, supra, 284 Ga. at 807 (emphasis added). That is, the language of the Code itself contains this element and, because Count 1 stated the offense in the terms and language of the Code, Count 1 included the very element Connor claims it omits.

D.

Even though Count 1 clearly satisfies Section 17-7-54 (a), and even though he is appealing from an order which explicitly denied his claim because of Section 17-7-54 (a), Connor makes no argument

whatsoever that Count 1 fails to satisfy Section 17-7-54 (a). Connor ignores Section 17-7-54 (a) entirely.

Instead, Connor argues that in *Lee v. State*, 324 Ga. 352 (2026), the Supreme Court has concluded that the language of the Code is insufficient to cover the intent element. This is incorrect. At issue in *Lee* was an erroneous and misleading jury instruction which authorized the jury to find the nexus element specifically in the absence of an intent to further the criminal purposes of the gang. The passages from *Lee* which Connor cites come from the Supreme Court's harm analysis, in which that Court rejected the idea that the reading of the indictment would render harmless the erroneous instruction. That Court did not conclude the statutory language did not include an intent; it ruled that the statutory language did not overcome a bad instruction.

E.

Count 1 stated the offense of participation in criminal street gang activity in the terms and language of the Code. The Code thus declares Count 1 to be good against a general demurrer. The order of the superior court was correct, and this Honorable Court should affirm.

II.

The superior court correctly granted the State’s motion in limine to prevent the defense’s desired impeachments of a non-witness, from whom the State presented no hearsay.

Connor asks this Court to provide what the law has never provided any criminal defendant in history: the benefit of a windfall a codefendant received based on a clear misstatement of non-binding law. This Court should not grant that request.

A.

Prior to trial, the State submitted a motion in limine which noted “the defense will attempt to elicit information at trial that law enforcement officers, **who will not testify as witnesses at trial**, have been disciplined, fired or otherwise administratively reassigned.” V02 146-147 (emphasis added). The State noted that such evidence is not relevant or admissible and moved to exclude it under OCGA § 24-4-403. *Id.* Bradford filed a brief asking that the State’s motion be denied. Bradford Letter Brief. That letter brief acknowledged that one Agent Jackson was would not be testifying at the trial. *Id.* at 2. See also *id.* at 8-9.

Bradford asserted he sought “to introduce evidence of [Jackson’s] misconduct to show that Jackson had a self-serving motive to lie

and provide false and misleading information to the other investigating officers in this case, and that his clandestine efforts were intentional and not the result of any mistake or accident.” Bradford Letter Brief, page 3-4. The focus was unmistakably on Jackson’s *credibility*. See *id.* at 4-5. A secondary focus was on how Jackson’s actions nebulously affected later-obtained evidence. See *id.*, at 6-7.

When the superior court heard this issue at trial, a trial prosecutor noted that the defense sought to deal with pure speculation in saying Jackson affected witnesses, given that there was always another officer present every time Jackson spoke to anyone relevant to the State’s case. V12 837-839. The superior court ultimately ruled that there was no probative value to evidence about Jackson and that such evidence would be “an attempt to mislead the jury,” and ruled against the defense. V12 842-843.

B.

The superior court ultimately granted codefendant Bradford a motion for new trial based on what can objectively be seen (as will be described more fully below) as a misstatement of foreign precedent.

Connor moved the superior court for a conforming order based on the idea that Connor was “in privity” with Bradford and that the

State was thus collaterally estopped from arguing against bad law. V03 406-410. As Connor notes, the superior court denied that motion because collateral estoppel did not apply and because, even if it did, Connor could not show harm. V03 421-425. This Honorable Court should deny Connor's claim of error.

1.

Preliminarily, it appears that collateral estoppel applies in a criminal case only to those matters which were litigated at *a trial* and resolved necessarily in the defendant's favor. "Collateral estoppel applies only after examining whether certain facts were resolved in the defendant's favor at a prior trial." *Gardner v. State*, 273 Ga. 809, 810 (2) (2001) (citation, italics omitted). See also *Harmon v. State*, 259 Ga. 444 (4) (1989). This is because collateral estoppel is incorporated in the Fifth Amendment's guarantee against double jeopardy. *Ashe v. Swenson*, 397 U.S. 436, 443 (1970).²

² Additionally, even in civil cases collateral estoppel applies to *judgments*. See OCGA § 9-12-40 under Chapter 12 (Verdict and Judgment) of Title 9 (Civil Practice). The judgment in a criminal case is the sentencing order, not the order on the motion for new trial. See OCGA § 5-6-38 (a) (providing for a notice of appeal within 30 days of a *judgment* or, alternatively, within 30 days of a motion for new trial *order*). The undersigned submits that the "issues" involved in collateral estoppel are the matters put at "issue" by a charging document and the defenses presented against them. Not claims of error.

On collateral estoppel, Connor relies on only two criminal decisions, neither of which expands collateral estoppel in a criminal case beyond what was stated in *Gardner*. In the first, *Malloy v. State*, 293 Ga. 350 (2013), the Supreme Court rejected the idea that an administrative proceeding ruling was to have preclusive effect over a criminal prosecution. In the second, *Swain v. State*, 251 Ga. App. 110 (2001), this Honorable Court addressed that same issue a decade before *Malloy*. Connor otherwise relies exclusively on civil cases.

More fundamentally, even if the doctrine applies more broadly in criminal cases than previously identified, Connor does not have a valid collateral estoppel claim.

“[T]he doctrine of collateral estoppel only operates to preclude the relitigation of issues that have been previously resolved **between the same parties.**” *Gardner*, supra, 273 Ga. at 810 (italics omitted; bold emphasis added). The only parties to Bradford’s motion for new trial were Bradford and the State. Connor was not a party.

The only exception to the “same parties” rule applies to those in privity. “A privy is generally defined as ‘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.’” *Brown v. Williamson*

Tobacco Corp. v. Gault, 280 Ga. 420, 421 (1) (2006) (citation omitted). Connor argues that he and Bradford are privities because they were both represented by counsel at the same trial. However, each criminal defendant at a joint trial has their *own* interests.

Indeed, the only case the undersigned could find in all of America which spoke to Connor's argument at all is an unpublished California appeals court decision in which, as here, the party advocating collateral estoppel "cite[d] no case in which criminal codefendants were held to be in privity, and we have found none. This very lack of authority is telling." *People v. Daniel White*, 2004 Cal. Appl. Unpub. LEXIS 619 *10 (Cal. App. 2004). That case went on to say that "[a]nalogous authority indicates they are not in privity." *Id.* (citation omitted).

In the Brief of Appellant, Connor attempts to distinguish this case from *Daniel White* but in doing so he misses the point entirely. The quoted passage points to the complete absence of case law supporting Connor's claim that he and his criminal codefendant Bradford are "in privity" with each other. It is not an answer to distinguish that case on its facts; the only appropriate answer to the assertion that such case law *does not exist* would be case law which *does exist*. Connor has not, does not, and cannot provide that. Connor points to no criminal case from any jurisdiction which supports him on this point.

Collateral estoppel does not apply.

2.

Even assuming the Bradford Order could apply to Connor's claim, the Bradford Order was clearly based on a material misreading of one foreign decision which is not binding even in its own jurisdiction.

First, the primary case relied upon by Bradford in both his pretrial letter brief and in his amended motion for new trial was *State v. Missouri*, 291 Wis. 2d 466 (2006). That case involved the admission of "other acts" evidence to prove that the government's primary testifying witness had a motive to lie. As Jackson did not testify at Connor's trial, *State v. Missouri* is entirely inapposite.

Second, Bradford's amended motion and the order the defense prepared for the superior court's use misstated the law. The Bradford Order asserts the following: "Because evidence regarding investigatory misconduct is relevant and presumptively admissible in determining the credibility, reliability, and authenticity of evidence presented by the State in its case in chief, it should have been admitted at the trial of this case." V03 352. There is no basis for this legal conclusion. To support this assertion, the Order cites *United States v. Andreas*, 17 F. Supp. 2d 835 (N.D. Ill. 1998), which is the only case Bradford presented for this proposition. Both Bradford's letter brief and the Order materially misstate *Andreas*.

Both documents include a block citation from *Andreas* which includes an added ellipses that alters the meaning of the words provided to assert (in essence) that: “As a matter of law,” the evidence at issue here “is admissible...” See V03 353. Not even *Andreas*, a non-precedential district court order, stands for that.

The block quote should say:

As a matter of law, government adherence or lack thereof to FBI internal guidelines is no basis for acquittal, *United States v. Caceres*, 440 U.S. 741, 59 L. Ed. 2d 733, 99 S. Ct. 1465 (1979), but is admissible to challenge credibility or reliability of the evidence. *United States v. Feeke*s, 879 F.2d 1562, 1564-65 (7th Cir. 1989).

United States v. Andreas, supra, 17 F. Supp. 2d at 849 (II) (A) (1). The Order and Bradford’s amended motion omitted the phrase “is no basis for acquittal,” which is the only part of this quote that the phrase “As a matter of law” applies to as written and as given the cases cited. The evidence at issue here is not “presumptively admissible” or admissible “[a]s a matter of law.” The Bradford Order is premised upon a material misstatement of law.

Third, the Order does not identify exactly what was error. Although Bradford said it would be important to impeach Jackson’s credibility, as noted above there was nothing to impeach. Jackson

was a non-testifying non-declarant: the State neither called Jackson as a witness nor tendered any statements from him. The State presented no evidence from which the jury was asked to rely upon Jackson. Otherwise, Bradford's arguments and the Bradford Order's conclusions existed at a very high level of generality and never established clearly what evidence Bradford was unable to present, never established how that would be relevant to the credibility or reliability of any specific evidence that was actually presented (as opposed to evidence the State did not present), and never established the method through which he would have tendered such evidence.

Adopting Bradford's claim does not benefit Connor, as it does not state a legal basis upon which this Court erred at trial.

3.

Connor faults the superior court for correcting its decision at all because that court denied his motion after the term in which it granted Bradford's motion, and because he styles the issue as an interlocutory ruling subject to Georgia's end-of-term rule.³ Georgia's "end-of-term rule is a creature of th[e] common law" of England as of May 14, 1776. *Thomas v. State*, 319 Ga. 123, 128

³ Connor enigmatically and repeatedly refers to the superior court's decision on Connor's motion as that court's "third" about-face.

(2024) (Bethel, J., concurring). See OCGA § 1-1-10 (c) (1). There are reasons to doubt it has been correctly applied to interlocutory decisions at all. See *Thomas*, supra, 319 Ga. at 130 (Bethel, J., concurring) (relevant authorities “cast doubt” on the application of end-of-term rule to interlocutory decisions). But more to the point, Connor does not cite any instance in which the end-of-term rule applied between criminal defendants. To be the common law of England as of May 14, 1776, it would have had to be established by that time. With no such authority to support it, Connor’s claim is without merit.

Indeed, having been convinced that the Bradford Order was wrong, the superior court here was not only authorized but required to apply the law to Connor’s motion for new trial, irrespective of its prior error. “It is a rare court...that concedes its prior ruling to have been wrong—not clearly wrong, just wrong—yet is unwilling to correct the earlier ruling.” Garner, Brad et al., *The Law of Judicial Precedent*, § 52, p. 447 (2016).

4.

As noted by the superior court, even if the Bradford Order applied to Connor, he would still need to show harm as applied to himself, and he has not done so. Bradford argued harm specifically

based on his not being at the scene at the time of the shooting. Connor was there at the scene. For more, see Division II-D, below.⁴

C.

The superior court properly excluded evidence intended to impeach the credibility of a non-testifying non-declarant.

Impeachment evidence is admissible in two instances. First, it can be admissible to impeach the credibility of a testifying witness. See, e.g., OCGA §§ 24-6-607 (“[t]he credibility of *a witness* may be attacked”) (emphasis added), 24-6-620 (“[t]he credibility of *a witness* shall be a matter to be determined by the trier of fact”) (emphasis added). Second, it can be admissible to impeach the credibility of a hearsay declarant. OCGA § 24-8-806 (“the credibility of *the declarant* may be attacked”). Here, the State did not call Agent Jackson as a witness and did not seek to introduce any statement for which Jackson was the declarant. Jackson’s credibility was not relevant to this case.

⁴ Connor suggests he might have called Jackson to testify, but this does not appear creditable. At one of the pretrial hearings, the superior court asked the defense if Jackson would testify and Bradford’s attorney said: “No. My understanding...is that the FBI’s lawyer has said that if he is subpoenaed that he will invoke his Fifth Amendment right.” V05 175. Connor’s attorney did not suggest something different.

The superior court correctly ruled that there was no probative value to evidence about Jackson and that such would be an attempt to mislead the jury. Evidence that is not relevant is not admissible, OCGA § 24-4-402, and even relevant evidence can be excluded if its probative value is substantially outweighed by the danger of misleading the jury, OCGA § 24-4-403.

The superior court did not err.

D.

Even assuming *arguendo* some error, such error was harmless under either constitutional or non-constitutional standards. This is so because the evidence against Connor *was* overwhelming.

That evidence included (but certainly was not limited to): the direct testimony of co-conspirator Decensea White implicating Connor in the conspiracy; the direct testimony of Bradford's driver Christopher Jordan, who placed Connor with the other conspirators as they were effectuating the conspiracy; objective evidence from a traffic stop tying Connor to Washington in their trip from Alabama; and Connor's own cell site location information, which showed not only his travel from Alabama to Atlanta the day before the murder and his trip back the night after, but showed his location in proximity to all the major locations to which he was tied as part of the conspiracy.

The evidence amply established that Connor traveled with Washington from Alabama to Atlanta to murder Vernell; that he and Washington engaged in a stake-out of Vernell at the hospital; that one of them then shot Vernell five times as he sat in his vehicle; that they then fled the area; that they then met up with the other conspirators; and that they then returned to Alabama.

III.

The superior court did not err in denying Connor's motion to suppress CSLI evidence.

Connor claims the superior court erred when it denied his motion to suppress cell-site location information ("CSLI"). This claim is not preserved and the superior court did not err.

A.

On June 12, 2012, JT Williams of Sandy Springs Police Department applied for and obtained a search warrant for CSLI and subscriber information related to two phone numbers related to Bradford and White, including one ending in x1984 and one ending in x6810. V06 383-388 (State's exhibits 1 and 2).

In September 2012, Williams met with Agent Jackson, who informed him that witness Jerome Antwain Minor had implicated Bradford and Connor ("Da Boi"), and Williams then had Connor's name and date of birth. Transcript 2014-07-28 at 193, 224-225, 229. Williams then traveled to Montgomery County, Alabama, where he met with Montgomery Police Department ("MPD"), obtained a cell phone number for Connor, and discovered the traffic citation for Connor from the day before the murder. Transcript 2014-07-28 at 193.

Using that information, on October 11, 2012, an MPD detective applied for and obtained a court order for Connor's phone records. Transcript 2014-07-28 at 193, 195-196, 217-218. See also V28 3857 (referring to court order date). In a related, earlier September 2012 application for court order regarding Bradford's phone (ending in x1984), the MPD detective noted that Connor and Washington were already suspects in this case at that time. See Transcript 2014-07-28 at 219; V06 406-410 (defendant's hearing exhibit 1). The court order for Connor's phone included more information than was in the Bradford order. See Transcript 2014-07-28 at 223-224.

On July 02, 2014, Williams sought and obtained a search warrant for Connor's phone records to comply with then-recent Supreme Court precedent. Transcript 2014-07-28 at 196-197; V06 389-391. They were the same records previously obtained through the MPD detective. Transcript 2014-07-28 at 197.

On July 02, 2014, JT Williams applied for an obtained a search warrant for CSLI and subscriber information for a phone number ending in x3730—Connor's phone. V06 389-394 (State's exhibits 3 and 4).

Connor moved to suppress that evidence based on the Alabama application and order specifically based on the absence of a search warrant. See V02 91-94. Connor's motion mentioned the new search warrant but was unable to make specific allegations about it at that

time. V02 93. Connor did not move for or obtain permission to amend his motion, and did not file a written amendment.

The superior court heard that motion on July 28, 2014.

B.

A motion to suppress “shall be in writing[.]” OCGA § 17-5-30(b). It also “shall...state facts showing that the search and seizure were unlawful.” *Id.* Under Section 17-5-30 (b), it is a defendant’s “obligation to state, in th[e] motion, why the search and seizure were unlawful, so as to afford notice of the legal issues which will be before the trial court.” *Young v. State*, 282 Ga. 735, 737 (2007). “[T]he suppression motion must be sufficient to put the State on notice as to the type of search or seizure involved, which witness to bring to the hearing on the motion, and the legal issues to be resolved at that hearing.” *Id.* at 736 (citation omitted). If a defendant fails to particularize his motion to suppress as to a specific issue, the defendant waives that issue and the trial court cannot grant the motion on that issue. *State v. Conley*, 273 Ga. App. 855, 855-856 (2005).

Connor’s written motion exclusively asserted the 2012 application and court order were unlawful because of the lack of a search warrant and based on the asserted lack of probable cause. V02 92. Connor’s written motion included no assertions that the

2014 search warrant was unlawful.⁵ Connor has not preserved these claims for appeal.

C.

Even assuming *arguendo* Connor preserved a claim against the 2014 warrant, it fails.

To adapt to changing legal standards, the State applied for and obtained a search warrant based upon a showing of probable cause. Indeed, the State sought to remedy the primary fault about which Connor was concerned: the lack of a search warrant. Far from demonstrating bad behavior which must be modified through exclusion, law enforcement here showed exemplary respect for Connor's rights.

Connor asserts that the State failed to show the 2014 warrant was untainted by facts obtained from the 2012 court order, claiming

⁵ This is a good example as to why notice is important. As best as the undersigned can tell, no one asked Det. Williams questions relevant to the claims Connor raises on appeal, specifically whether the information in the 2014 warrant was independent of or tainted by the records obtained in 2012. Indeed, given that Connor's only claims were about a search warrant and probable cause, the State only presented at the hearing a search warrant supported by probable cause. The 2012 application for Connor's records, which the record appears to indicate was different than the earlier application for Bradford's records, does not appear to have been admitted as an exhibit at the hearing.

that the only way the State had connected Connor to the number was through the court order. That is flatly incorrect. Det. Williams testified that he and MPD had obtained Connor's name and phone number in September 2012, *prior to* the October 2012 application for a court order of number x3730. Indeed, the September 2012 application for Bradford's records (which Connor appears to cite as his own) already identified Connor as a suspect. The 2014 affidavit and search warrant were not tainted by facts from the 2012 court ordered phone records.

Connor also asserts that the superior court was wrong to conclude that law enforcement would not have inevitably obtained Connor's phone records but-for the 2012 application and court order. This is incorrect. Officers had what they believed was a lawful order for phone records. They were attempting to get the phone records for everyone involved. In his November 2012 interview with Det. Williams, Connor confirmed the x3730 number was his own. The officers were dealing with a coordinated two-state conspiracy in which Connor and Washington were documented as traveling to Georgia by both traffic citation and witness statements that they were present for and intimately involved in the shooting. It was imminently reasonable for the superior court to conclude that Georgia law enforcement would have sought to obtain the very records Alabama law enforcement gave them.

IV.

The superior court did not err in admitting a music video which was materially relevant to facts in issue.

Codefendant Bradford was a rapper known as Eldorado Red and released a song entitled “100 Shooters.” The video for the song made very clear that Eldorado Red identified as a gang member; depicted Eldorado Red wearing an oversized medallion prominently displaying the letters “BGM” and singing “couple cold cases / couple dead bodies / BGM jack boys / armed robbery”; asserted that the gang would resolve its issues with violence and that it would respond to disrespect with deadly violence; mentioned “Da Boy” as one of his shooters; and displayed what appears to be an image of marijuana in bulk while Eldorado Red sang: “We got them Mexicans / bringing work in.” The video also showed Eldorado Red in a crowd of fellow gang members, where the predominating color was red. Relying exclusively on one Rule 403 case, Connor asserts the superior court committed reversible error by admitting this video.

A.

Rule 403 is an extraordinary remedy, which should be used only sparingly, and the balance should be struck in favor of admissibility. Thus, in reviewing issues under

Rule 403, we look at the evidence in a light most favorable to its admission, maximizing its probative value and minimizing its undue prejudicial impact.

Anglin v. State, 302 Ga. 333, 337 (3) (2017) (quoting *United States v. Edouard*, 485 F.3d 1324, 1344 n.8 (11th Cir. 2007)).

In order to prove the offense of participation in criminal street gang activity as to Bradford, Connor, and Washington, the State was required to prove the existence of a criminal street gang, which in this case was BGM, a Bloods gang. This required the State to show that BGM was an “organization, association, or group of three or more persons associated in fact[.]” OCGA § 16-15-3 (3). The law explicitly permits the State to establish a gang through “evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics.” OCGA § 16-15-3 (2). The “100 Shooters” video was unquestionably relevant for these purposes.

Indeed, the video was probative of a number of issues in this case, as it helped to establish that Bradford (aka Eldorado Red) was associated with a gang, that BGM was that gang, that that gang included more than three people, that the gang was organized for criminal purposes, that the group advertised it would target someone like Vernell for violence (due to disrespect of robbing them of marijuana), and that Bradford was associated with Connor,

whose nickname was “Da Boy.” Moreover, to the extent Connor suggests the video is evidence of other criminal gang activity, the Legislature prior to Connor’s trial declared its belief that such evidence would be admissible specifically “for the purpose of proving the existence of the criminal street gang and criminal gang activity.” OCGA § 16-15-9 (2014).

As this video was highly probative of multiple issues relevant in this case, it was not inadmissible under Rule 403. See, e.g., *Wilson v. State*, 315 Ga. 728 (8) (a) (2023) (although defendant’s appearance in a rap video “may have cast [him] in an unflattering light, it did not do so *unfairly*” and that evidence was properly admitted under Rule 403) (emphasis in original). The superior court did not err.

B.

Connor cites *Baker v. State*, 318 Ga. 431 (2024). In that case, the Supreme Court reversed a conviction based on its conclusion that the admission of a rap video was error as the video was without probative value. That was a case-specific conclusion. Unlike this case, *Baker* did not involve any charges of gang activity. And the purpose of the video in *Baker* was to establish that one defendant (Baker) might have been a part of another defendant’s entourage, which that video did (at best) only weakly.

Indeed, the video was not unduly prejudicial against Connor. Eldorado Red was the one singing and the majority of the gang members depicted wore masks, so if the video depicts Connor, it does not do so clearly. See *Carston v. State*, 310 Ga. 797, 803 (3) (b) (2021) (gang “video was not *unduly* prejudicial, particularly because Appellant himself was not in the video beating Williams”) (emphasis in original). Even assuming *arguendo* an error, that error was harmless given the nature of the exhibit as to Connor, and given the strength of the other evidence presented against him.

V.

Connor was not denied his constitutional rights to the effective assistance of counsel.

Connor raises three claims of ineffective assistance of counsel. The superior court heard testimony on these three claims and rejected each of them. For the reasons which follow, this Honorable Court should affirm.

A.

Connor raises his general demurrer claim alternatively as an ineffective assistance claim. For all the reasons provided in Division I, above, the State asserts that a general demurrer to Count 1 was and would be meritless. “Because a general demurrer to the indictment on the ground” that Connor advances “would have been meritless, [Connor] has not shown that his trial counsel performed deficiently.” *Clark v. State*, 315 Ga. 423, 444 (5) (2023). Moreover, as there is no case law to support Connor’s position, Connor improperly faults his trial attorney for failing to make a novel argument. See *Griffin v. State*, 309 Ga. 516, 520 (2) (2020) (“failure to raise a novel legal argument does not constitute ineffective assistance of counsel”). The superior court’s rulings on this claim should be affirmed.

B.

Connor claims he was prejudiced because his attorney did not request a specific instruction on identification. This is not so.

“There is no requirement of our law that a trial judge warn the jury against the possible dangers of mistaken identification of an accused as the person committing a crime.” *Weems v. State*, 268 Ga. 515, 517 (5) (1997) (cleaned up). Where (as here) the jury was instructed on the State’s burden of proof, the presumption of innocence, reasonable doubt, V26 3729-3730, credibility of witnesses, V26 3736, and impeachment of witnesses, *id.*, “the jury was instructed on the general principles of law underlying a defense of misidentification.” *Springs v. Seese*, 274 Ga. 659, 662 (3) (2002). Thus, under such circumstances, even “[a]ssuming counsel was deficient in failing to object to the court’s lack of an identity instruction, there is no reasonable likelihood of a different result at trial had counsel secured an instruction on identification, and no ineffective assistance of counsel is shown.” *McLean v. State*, 291 Ga. 873, 878 (5) (c) (2012) (citation omitted).

The superior court’s rulings on this claim should be affirmed.

C.

Connor claims his counsel was professionally deficient for failing to object to the Court’s instruction on conspiracy, on the ground that

it was a constructive amendment to Count 2. The State does not understand Connor's claim.

Count 2 alleged, in pertinent part, that Connor, Washington, and others "did unlawfully, together with one or more persons conspire to commit the crime of MURDER...and at least one of those persons did an overt act to effect the object of said conspiracy," in that Connor and Washington traveled to Northside Hospital in Fulton County, Georgia and located and shot Melvin Vernell III[.] V02 06.

The instruction which Connor claims no competent attorney acting reasonably would fail to object to reads as follows:

A person commits conspiracy to commit a crime when that person, together with one or more other persons, conspire to commit any crime, and any one or more of such person [sic] does any overt act to bring about the object of the conspiracy.^[6] A conspiracy is an agreement between two or more persons to do an unlawful act. And the existence of a conspiracy may be established by proof of acts and conduct, as well as by proof of an express agreement. When persons associate themselves in an unlawful enterprise, any act done by any parties to the conspiracy to further the unlawful enterprise is considered to be the act of all the conspirators.

⁶ Except for an -s at the end of conspire and "such person," and except for the absence of a comma before "and," this sentence is verbatim the pattern jury instruction found at 2 *Ga. Jury Instructions—Criminal* § 2.02.10 (conspiracy; offense of; definition).

However, each person is responsible for the acts of others only insofar as such acts are naturally or necessarily done to further the conspiracy. Whether or not a conspiracy existed in this case is a matter for you to determine.[⁷] Presence, companionship and conduct before and after the commission of the alleged offense or offenses may be considered by you in determining whether or not such circumstances, if any, give rise to an inference of the existence of a conspiracy.[⁸]

V26 3750-3751. As identified in the footnotes, this instruction is comprised nearly verbatim of the pattern instructions on matters relevant to conspiracy. It appears correct and the undersigned does not see how these instructions expanded or amended the indictment.

Connor claims that the jury was not limited to the allegations contained in the indictment. That is not so. The superior court instructed the jury that “[t]he indictment and plea form the issue” that the jury was to decide, V26 3729, that “[t]he burden rests upon

⁷ Except for minor punctuation differences stemming from the first two sentences being one sentence, the material between the last footnote and this one is verbatim the additional pattern instruction on conspiracy found at 2 *Ga. Jury Instructions—Criminal* § 2.02.20 (conspiracy; additional instructions; culpability).

⁸ Except for a comma after “companionship” and the absence of the phrase “or offenses,” this sentence is verbatim the pattern instruction found at 2 *Ga. Jury Instructions—Criminal* § 2.02.30 (conduct and presence of parties).

the State to prove every material allegation of the indictment and every essential element of the crime or crimes charged beyond a reasonable doubt,” V26 3730, and that “[t]he defendant is in trial for the offenses charged in this bill of indictment only and not for any other acts[.]” V26 3743.

Connor did not below, and does not here, identify how these instructions amended the indictment. Connor does not cite any case law which would have put his trial attorney on notice that the pattern jury instructions were erroneous as applied to this case. As there is no apparent case law to support Connor’s position, Connor improperly faults his trial attorney for failing to make a novel argument. See *Griffin v. State*, 309 Ga. 516, 520 (2) (2020) (“failure to raise a novel legal argument does not constitute ineffective assistance of counsel”).

The superior court correctly rejected this claim below, and that rejection should be affirmed here.

D.

As part of his ineffective assistance claims, Connor argues cumulative error. The State submits there is no error to cumulate and, even assuming that multiple errors exist or are assumed, they do not combine to cause the conclusory outcomes Connor suggests.

Part Three

CONCLUSION

This Honorable Court should DENY Appellant MAURICE CONNOR's claims on appeal and should AFFIRM the decisions of the superior court, below.

Respectfully submitted this 3rd day of August 2026.

“This submission does not exceed the word count limit imposed by Rule 24.”

/s/ KEVIN ARMSTRONG

KEVIN ARMSTRONG 987456

Deputy District Attorney—Appeals

CERTIFICATE OF SERVICE

I certify that there is a prior agreement with counsel for Appellant, **Mr. Matthew K. Winchester**, to allow documents in a PDF format sent via email to suffice for service. See Court of Appeals Rule 6 (b) (2). I thus hereby certify that on this 3rd day of August 2026, I have served the following person in such a manner:

Mr. MATTHEW K. WINCHESTER, Esq.

k.winchestercb@gmail.com

(678) 517-6894

3151 Maple Drive NE

Atlanta, Georgia 30305

/s/ KEVIN ARMSTRONG

KEVIN ARMSTRONG

Deputy District Attorney

987456

Office of the District Attorney

136 Pryor Street SW, Third Floor

Atlanta, GA 30303

Cell (404) 358-7599

kevin.armstrong@fultoncountyga.gov