

IN THE SUPREME COURT  
STATE OF GEORGIA

KAREEM H. ALLEN,  
Appellant,

v.

STATE OF GEORGIA,  
Appellee.

\*  
\* CASE NO. S10A1301  
\*  
\* ON APPEAL FROM THE SUPERIOR  
\* COURT OF FULTON COUNTY  
\*  
\* MALICE MURDER, AGGRAVATED  
\* ASSAULT WITH A DEADLY  
\* WEAPON (4 COUNTS)

---

SUPPLEMENTAL BRIEF ON BEHALF OF THE APPELLEE  
BY THE ATTORNEY GENERAL

---

THURBERT E. BAKER 033887  
Attorney General

MARY BETH WESTMORELAND 750150  
Deputy Attorney General

PAULA K. SMITH 662160  
Senior Assistant  
Attorney General

SHEILA E. GALLOW 910489  
Assistant Attorney General

Please serve:

SHEILA E. GALLOW  
Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square, S. W.  
Atlanta, Georgia 30334-1300  
(404) 657-0687

IN THE SUPREME COURT  
STATE OF GEORGIA

KAREEM H. ALLEN,  
Appellant,  
v.  
STATE OF GEORGIA,  
Appellee.

\*  
\* CASE NO. S10A1301  
\*  
\* ON APPEAL FROM THE SUPERIOR  
\* COURT OF FULTON COUNTY  
\*  
\* MALICE MURDER, AGGRAVATED  
\* ASSAULT WITH A DEADLY  
\* WEAPON (4 COUNTS)

---

SUPPLEMENTAL BRIEF ON BEHALF OF THE APPELLEE  
BY THE ATTORNEY GENERAL

---

Comes now the State of Georgia, Appellee in this case, through counsel, Thurbert E. Baker, Attorney General of Georgia, and submits this supplemental brief on the question of the State's alleged use of perjured testimony of Octavia Bennett, an issue raised for the first time in this case by Amicus Curiae in his brief.

Amicus counsel, who represented Appellant in the early stages of this case, has alleged that the State used perjured testimony from Octavia Bennett at trial.<sup>1</sup> The perjury claim was not raised by Appellant at trial or in his motion for new trial or as an enumeration of error in this appeal, and there has been no finding by the trial

---

<sup>1</sup>A copy of Amicus counsel's most recent communication to the undersigned is attached.

court as to whether Ms. Bennett gave perjured testimony. Thus, the issue is not properly before the Court for review.

In the absence of any finding by the trial court that Ms. Bennett's testimony was perjured<sup>2</sup>, Appellee was and is entitled to rely on the entire record in arguing why the evidence authorized the jury's verdict beyond a reasonable doubt under Jackson v. Virginia, 443 U.S. 307 (1979).

(Brief on Behalf of the Appellee by the Attorney General, p. 8, 14, 19). Under Jackson, reviewing courts are to construe the evidence in a light most favorable to the verdict, to resolve any conflicts in the evidence in favor of the prosecution, and to defer to the jury's assessment of the weight and credit of the evidence. Jackson, 443 U.S. at 319, 326. This Court "'does not reweigh evidence or resolve conflicts in testimony'" as the jury is "'to determine the credibility of witnesses and resolve any conflicts or inconsistencies in the evidence.'" Vega v. State, 285 Ga. 32, 33, 673 223 (2009) (quoting Mickens v. State, 277 Ga. 627-29, 593 S.E.2d 350 (2004)).

---

<sup>2</sup> Amicus counsel, who represented Appellant at his bond hearing; has asserted that Ms. Bennett committed perjury when she testified at trial that, after she heard a shot fired, she looked up the street and saw co-defendant Lamar grab a gun from Appellant. (T. 1532). The defense extensively cross-examined Ms. Bennett about any alleged inconsistencies between her testimony at trial and the bond hearing. (T. 1541-88).



CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing BRIEF, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed, upon:

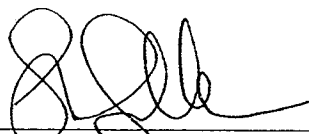
Douglas B. Ammar, Esq.  
Georgia Justice Project  
438 Edgewood Avenue  
Atlanta, GA 30312

Tracy K. Ledbetter, Esq.  
Sutherland, Asbill, & Brennan, LLP  
999 Peachtree Street, N.E.  
Atlanta, GA 30309

Clark D. Cunningham, Esq.  
Amicus Curiae Counsel  
Georgia State University  
P.O. Box 4037  
Atlanta, GA 30302-4037

Marc A. Mallon  
Fulton County District Attorney's Office  
136 Pryor Street, S.W.  
Atlanta, GA 30303

This 8<sup>th</sup> day of July, 2010.



---

SHEILA E. GALLOW  
Assistant Attorney General

**Paula Smith**

---

**From:** Clark Cunningham [cdcunningham@gsu.edu]  
**Sent:** Wednesday, July 07, 2010 2:13 PM  
**To:** Paula Smith  
**Cc:** Marc Mallon; Sheila Gallow  
**Subject:** Kareem Allen v. State, Testimony of Octavia Bennett  
**Attachments:** BennettLetterToJudgeWright.pdf

Dear Ms. Smith,

I am mailing the following letter to you today, with copies to Sheila Gallow and Marc Mallon.

If you would like to talk by phone, the most reliable way to reach me is to call my cell: 404-664-2150

Sincerely yours,

Clark D. Cunningham  
W. Lee Burge Professor of Law and Ethics  
Georgia State University College of Law  
P.O. Box 4037  
Atlanta, GA 30302-4037  
Phone: (404) 413-9168  
Fax: (404) 413-9225  
Street Address for Courier Delivery:  
140 Decatur Street, Suite 400  
Atlanta, GA 30303  
Email: cdcunningham@gsu.edu  
Home Page: <http://law.gsu.edu/ccunningham/>

The Burge Chair was established by an endowment from the U.S. District Court for the Middle District of Georgia, using funds collected for alleged attorney misconduct to promote ethics, professionalism, and access to justice.

\*\*\*\*\*

July 7, 2010

Paula K. Smith  
Senior Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square, SW  
Atlanta, Georgia 30334

Re: Kareem Allen v. State, Testimony of Octavia Bennett

Dear Ms. Smith:

7/7/2010

I write to follow-up on our conversation of June 28, 2010 in light of last Monday's oral argument in *Kareem Allen v. State*. I write this letter – as I wrote to Paul Howard previously – as a concerned citizen and member of the Bar, not on behalf of the Appellant or as a member of his defense team. Accordingly I am not copying Appellant's counsel on this letter, though I have notified them of my intent to write to you.

During Mr. Ammar's opening argument that the evidence was insufficient to support the murder verdict, the Court specifically asked if there was evidence that Allen had given a gun to one of his co-defendants at the time of the shooting. Of course Mr. Ammar then had to acknowledge the testimony of Octavia Bennett cited in your brief at 8 that she saw Lamar "grab" a gun from Allen and then shoot the victim. T. 1532-33. He went on to argue, as he had to do, that even if this testimony were believed it was not sufficient evidence that Allen intentionally aided or encouraged the murder. But clearly the Court thought this evidence important, as of course your brief argued.

When Mr. Mallon then argued for the State, consistently with the brief he filed, he carefully avoided any reliance on this testimony by Bennett. Instead he began by saying the most important evidence supporting the verdict was testimony regarding Allen's conduct before the shooting at the party. He concluded his discussion of the sufficiency issue by arguing there was evidence that Allen was holding a gun near the scene of the shooting, citing not Bennett but instead testimony by Amber McAdory. However, at no point did Mr. Mallon disavow on behalf of the State the arguments of the Attorney's General brief relying on Bennett's testimony or indicate in any way that the Attorney General now concurred with his own actions in not offering Bennett's testimony to the Supreme Court.

If Georgia Rule of Professional Conduct 3.3 is applicable, as I urged Mr. Howard and Mr. Mallon and then you and Ms. Gallow to consider, remedial measures must now be taken by the office of the Attorney General to assure that the Court does not rely on Bennett's testimony in rendering its decision. Therefore I ask you seriously to consider writing to the Court, either by letter or supplemental brief, clearly indicating that the Attorney General now concurs with the decision of the District Attorney not to offer Bennett's testimony at T. 1532-33 to the Court as evidence supporting the murder verdict, and therefore the Court should disregard the citation and discussion of this testimony in the Attorney General's Brief at 8, 14 and 19.

I attach, as a well known example of such a remedial action, the letter sent by Robert Bennett to the court after he learned that the affidavit of Monica Lewinsky upon which he had relied at the deposition of President Clinton was false.

Sincerely yours,

Clark D. Cunningham  
W. Lee Burge Professor of Law & Ethics

cc:  
Sheila E. Gallow, Assistant Attorney General

7/7/2010

Marc A. Mallon, Fulton County District Attorney's Office



September 30, 1998

Dear Judge Wright,

As you are aware, Ms. Monica Lewinsky submitted an affidavit dated January 7, 1998 in the above-captioned case in support of her motion to quash the subpoena for her testimony. This affidavit was made part of the record of President Clinton's deposition on January 17, 1998.

It has recently been made public in the Starr Report that Ms. Lewinsky testified before a federal grand jury in August 1998 that portions of her affidavit were misleading and not true. Therefore, pursuant to our professional responsibility, we wanted to advise you that the Court should not rely on Ms. Lewinsky's affidavit or remarks of counsel characterizing that affidavit.

Very truly yours,  
Bob Bennett