

FYI: STATE v. LANE

The Georgia Supreme Court adopts the Cumulative Error Rule in determining whether a criminal defendant is entitled to a new trial.

In *State v. Lane*, S19A1424 (Feb. 10, 2020), Lane was convicted of malice murder and other offenses in the shooting death of Perez. The evidence, briefly stated, showed that Lane hired Stallworth to kill Gonzalez, who was apparently interfering with Lane's relationship with Lane's girlfriend. Lane was referred to Stallworth by Davis, Stallworth's cousin. Stallworth testified that Lane showed him Gonzalez's apartment, truck, and photo, and gave Stallworth a gun. However, Stallworth shot and killed Perez, Gonzalez's cousin, in a case of mistaken identity, as Perez was leaving Gonzalez's apartment.

The trial court granted Lane's motion for new trial. The trial court found that trial counsel was ineffective for (1) failing to cross-examine the lead detective with evidence that he testified falsely about Davis's statements to him, and (2) failing to object to hearsay and bolstering testimony by the lead detective. In addition, the trial court found that it had erred in various respects, including in admitting, over objection, Stallworth's girlfriend's testimony as to statements by Stallworth. The State appealed.

The Court stated that it has repeatedly held that Georgia does not recognize the cumulative error rule – meaning that an appellate court will not consider the collective prejudicial effect of multiple errors by the trial court, or the collective prejudicial effect of trial court error and ineffective assistance of counsel. However, the Court stated, it was unable to identify any legal principle – let alone a compelling reasoned explanation – behind this rule. And the Court found, weighing prejudice cumulatively is simply a natural implication of the harmless error doctrine: The cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error. The purpose of a cumulative error analysis is to address that possibility. Such an analysis is an extension of the harmless error rule, which is used to determine whether an individual error requires reversal.

Furthermore, the Court found compelling that all federal circuit courts of appeals explicitly endorse cumulative error review. Thus, the Court adopted the rule, overruled its prior decisions and those of the Court of Appeals that hold that the prejudicial effect of multiple trial court errors

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may not be considered cumulatively in determining whether a criminal defendant is entitled to a new trial, and disapproved any decisions with language to that effect (the Court listed over 100 cases in an appendix to its opinion). The Court held that the proper approach now is to consider collectively the prejudicial effect, if any, of trial court errors, along with the prejudice caused by any deficient performance of counsel.

Turning to the merits of the trial court's order, the Court found that the trial court properly concluded that trial counsel rendered ineffective assistance in both instances. The Court further found that the trial court did not commit clear error in determining that the testimony of Stallworth's girlfriend was inadmissible hearsay. Thus, because prejudice and harm were shown, the Court concluded that the trial court did not err in granting Lane a new trial.

In so holding, the Court noted that the only trial court error and deficiencies of counsel that it analyzed here involved evidentiary issues. Some other types of error may not allow aggregation by their nature, but that question was not presented here. Thus, the Court cautioned, if a defendant in a future case seeks to argue to the reviewing court that he is entitled to a new trial based on the cumulative effect of errors outside of the evidentiary context, he or she would do well to explain why the approach that the Court adopted here should be extended beyond the evidentiary context. And even in the evidentiary context, a defendant who wishes to take advantage of the newly-adopted cumulative error rule should explain to the reviewing court just how he or she was prejudiced by the cumulative effect of multiple errors.