



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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WRIGHT V. THE STATE (S08A1825)

The Supreme Court of Georgia has upheld the convictions and life prison sentence given to Christopher Wright of **Muscogee County** for the 2004 murder of his stepdaughter, 5-year-old India Barrow. In a 2005 trial, a jury convicted Wright of malice murder, felony murder and cruelty to children; it found Essie Wright, the child's mother, not guilty of charges related to her daughter's death.

In today's unanimous opinion, written by **Justice Robert Benham**, the court finds that the trial court committed no errors that would warrant reversing the verdict in light of the overwhelming evidence against Wright. According to the evidence presented at trial, Wright – a sergeant in the military – was at home alone taking care of India and her infant brother when according to Wright's own testimony, he "popped" India twice for vomiting while he tried to feed her dinner. He then shook her, causing the child's head to hit the railing of her bunk bed. Medical experts testified the impact was equivalent to what one would suffer in an auto wreck or in a fall from a great height. After putting India to bed, Wright discouraged her mother from checking on her when she returned home. During the night, experts testified, India's brain swelled and bled, and authorities found vomit and urine in her bed consistent with massive brain injury. The next day, when her mother discovered her unconscious, India was admitted to the hospital in a coma. She died five days later, and hospital authorities concluded that her injuries were consistent with child abuse.

“The evidence adduced at trial and summarized above was sufficient to authorize a rational trier of fact to find appellant guilty beyond a reasonable doubt of malice murder and cruelty to children,” today’s opinion says.

In his appeal, Wright’s attorney argued that the trial court was wrong to allow in evidence of a similar incident involving India’s infant brother. “We disagree,” the court finds. Seven months before India was killed, her mother took her to the hospital because of injuries she’d suffered while in Wright’s care. At that time, India had a black eye, cut lip, swelling on her face and ruptured eardrums. Because authorities suspected the little girl was being abused, they also had her infant brother brought to the hospital where doctors discovered the baby had a black eye and cut lip. Wright’s attorney also argued that the trial court erred by allowing the jury to hear testimony from a military police officer who responded more than a year and a half before India’s death to a domestic disturbance call made by India’s mother. The Wrights lived at the time on a military base. The officer found India, then 3 or 4 years old, with a bruise on her face and holding an ice pack on it. The officer said India told her, “Daddy did it.” While the state Supreme Court finds the trial court should not have allowed in the officer’s statements which were “testimonial in nature,” admission of the hearsay statements was harmless, the high court concludes. The trial court also allowed in testimony from India’s maternal grandmother, who took care of India and said that the day before she was killed, she showed her grandmother marks on her stomach where she said Wright had hit her. And the trial court allowed India’s biological father to testify that once in 2003 while he was visiting with her, India told him that Wright had hit her in the stomach. In today’s opinion, the state Supreme Court finds that allowing in the grandmother’s testimony “was not an abuse of discretion,” and even if the biological father’s testimony should have been excluded, “any error in allowing the testimony was harmless in light of the overwhelming evidence of appellant’s guilt.”

Attorney for Appellant (Wright): William Mason

Attorneys for Appellee (State): John Conger, District Attorney, Robert Bickerstaff II, Asst. D.A., Thurbert Baker, Attorney General, Sara Sahni, Asst. A.G.

SCHRAMM ET AL. V. LYON ET AL. (S08G1391, S08G1418)

The Georgia Supreme Court has ruled that a woman can go forward with her medical malpractice lawsuit. The **Fulton County** case involves a woman whose spleen was removed in 1982 following a car wreck. Twenty-two years later, in 2004, Betty Lyon developed an aggressive infection which required the amputation of a significant portion of both her legs and arms. Because the spleen functions as a filter of bacteria, one risk of removing it is the development of “overwhelming post-splenectomy infection.” In August 2006, Lyon filed suit against eight doctors, including C. Steven Schramm, alleging they failed a number of times to warn her of the high risk of infection associated with a splenectomy, or prescribe antibiotics to prevent it. Three of the doctors filed motions to dismiss the case because they had first seen her prior to August 2001. Under the state law called the “statute of repose,” medical malpractice actions must be filed within five years of the date the negligent or wrongful act occurred. The trial court dismissed the case against the three physicians, agreeing that their failure to warn her of risks was a single incident that fell outside the time limit. The Georgia Court of Appeals subsequently reversed the ruling.

In today's unanimous opinion, written by **Justice Hugh Thompson**, the state Supreme Court agrees with the Court of Appeals' decision, finding that "the claims are not barred by the statute of repose." Lyon is alleging that the doctors committed new and separate acts of professional negligence by failing to warn and preventatively treat her whenever she went to the doctor for a cold or some other kind of medical condition. As a result, Lyon is alleging that these subsequent negligent acts, which caused new injuries, each started a new five-year clock running. There is nothing in the law that states the period of repose must begin on the date of the *first* negligent act or omission, the opinion says. "As this Court has recognized, multiple breaches of the standard of care may constitute new and separate instances of professional negligence and more than one negligent act may contribute to a plaintiff's injury." The Court emphasizes that its opinion "should not be interpreted as to impose upon physicians a continuing duty to warn patients of risks from an existing condition at each subsequent visit. Instead, it is our recognition that the complaint in this case sufficiently alleges separate and independent acts of professional negligence within the statutory period of repose."

Attorneys for Appellants (Schramm): Jonathan Peters, Jeffrey Bazinet, Lori Cohen, Michael King, Thomas Mazziotti, John Merchant III

Attorneys for Appellees (Lyon): Daniel Ragland, Philip Henry, Harvey Spiegel, Wendy Huray

The Georgia Supreme Court considered three other cases that were appealed from the Court of Appeals, all involving criminal law issues:

THE STATE V. EVANS (S08G0504)

The state Supreme Court has reversed a decision by the Georgia Court of Appeals and found that a man convicted of burglary "knowingly and intelligently" chose to represent himself at trial rather than exercise his right to an attorney.

In 2005, Gregory Evans was arrested in **Douglas County** for burglary and giving a false name to a law enforcement officer after he and his wife were caught staying in an abandoned house and taking items from it. Prior to trial, Evans asked that his appointed counsel be dismissed and that he be permitted to represent himself "pro se." Initially the trial judge denied his request but later relented after Evan insisted he'd spent five months studying the law and was capable of representing himself. The jury subsequently convicted him, and he appealed to the Court of Appeals, which reversed the decision, finding that the trial court had failed to advise Evans of six points which that court has said are required for a valid waiver of the right to counsel.

But in today's unanimous opinion, written by **Justice Harris Hines**, the Georgia Supreme Court disagrees, finding that the Court of Appeals erred and that "Evans's waiver of his right to counsel was made knowingly and intelligently." The trial judge "repeatedly cautioned Evans about the dangers of self-representation, and discussed the benefits of having qualified counsel representing him, and Evans clearly understood what he was undertaking," the Supreme Court finds. The opinion emphasizes: "We take this opportunity to again reiterate that the rote application of the six-part test used by the Court of Appeals is not mandated, and a defendant's waiver of his right to counsel is valid if the record reflects that the defendant 'was made aware of the dangers of self-representation and nevertheless made a knowing and intelligent waiver.'" The

extent of the defendant's legal knowledge is irrelevant, the high court finds, quoting an earlier state Supreme Court decision. "The test is not whether the accused is capable of good lawyering – but whether he knowingly and intelligently waives his right to counsel."

Attorneys for Appellant (State): David McDade, District Attorney, James Dooley, Asst. D.A.

Attorneys for Appellee (Evans): Mary Erickson, M. Paul Reynolds

REYNOLDS V. THE STATE (S08G1123)

The Georgia Supreme Court has reversed a decision by the Georgia Court of Appeals, finding it was wrong to affirm a man's aggravated battery conviction after the prosecutor improperly commented to the jury on the man's failure to come forward and give his side of the story before his arrest.

Paul Edward Reynolds was convicted in 2005 of aggravated battery after a **Gwinnett County** jury found him guilty of breaking into his former girlfriend's home and beating her. In closing arguments at trial, the prosecutor pointed out that the night of the incident, Reynolds left the scene and failed to "wait for police to respond to give his version of the facts." Reynolds' motion for new trial was denied, and he appealed to the Court of Appeals, which upheld his conviction and sentence.

But in today's unanimous opinion, written by **Justice Harris Hines**, the Supreme Court finds the Court of Appeals was wrong, and it is remanding the case to that court "for consideration consistent with this opinion." A defendant's silence or inaction can sometimes be interpreted as an admission of guilt, the high court finds. "[C]ertainly in the situation of a criminal defendant, this failure to speak or act will most often be judged as evidence of the admission of criminal responsibility," the opinion says. "Thus, the element of prejudice is indisputable." Under the Georgia Supreme Court's 1991 decision, *Mallory v. The State*, a comment about a defendant's pre-arrest silence or failure to come forward could prejudice the jury and is therefore not allowed. "Yet, despite the clarity of the bright-line evidentiary rule enunciated in *Mallory*," the opinion states, the Court of Appeals continues to rely on its 2001 decision, *Morrison v. State*, which determined that the prohibition against comments such as the prosecutor's extends only to two circumstances. In today's opinion, the Supreme Court finds that, "[t]he exclusions stated in *Morrison* and its progeny conflict with the applicable holding in *Mallory*, and such cases are hereby overruled."

Attorney for Appellant (Reynolds): Brian Steel

Attorneys for Appellee (State): Daniel Porter, District Attorney, Deborah Fluker, Asst. D.A.

THE STATE V PALMER (S08G1419)

The state Supreme Court has thrown out a decision by the Georgia Court of Appeals and sent the case back to that court to reconsider whether evidence of illegal drugs should be suppressed when the case goes to trial.

This **Fulton County** appeal stems from a controlled buy of crack cocaine made at the apartment of David Palmer by a confidential informant. Following the purchase, a magistrate judge granted Atlanta Police Officer Pete Ries a search warrant based on his affidavit that he and his partner had used a "reliable" informant to buy the drugs under their supervision. The next day, officers served the warrant and seized from Palmer's apartment crack cocaine, marijuana, nearly \$3,000 in cash, two electronic scales and several small baggies.

After Palmer’s arrest, his attorney moved to suppress the evidence on the basis that the officer’s affidavit was invalid. Although Ries represented the informant as “reliable,” he failed to disclose that the informant had a police record or provide sufficient information to establish there was probable cause that criminal activity was taking place. Initially Fulton Superior Court Judge Marvin Arrington wrote an order denying Palmer’s motion. But after Palmer asked the court to reconsider, Arrington issued another order granting the motion to suppress without explaining why. The Court of Appeals upheld the decision.

But in today’s unanimous opinion, written by **Justice Hugh Thompson**, the high court has vacated the judgment and remanded the case to the Court of Appeals. The lack of certain information in the affidavit does “not necessarily warrant suppression of the evidence,” the opinion says. Quoting an earlier Georgia Supreme Court decision, it says that “[t]he duty of the appellate courts ‘is to determine if the magistrate had a “substantial basis” for concluding that probable cause existed to issue the search warrant.’” Although Officer Ries may have failed to disclose that the informant had a criminal background, “[i]f any omissions on the part of the officer are offset by independent corroboration of criminal activity, then the magistrate may still have sufficient information to find that probable cause exists.” And a controlled buy strongly corroborates the reliability of the informant, the Supreme Court finds.

Attorneys for Appellant (State): Paul Howard, Jr., District Attorney, Bettianne Hart, Dep. D.A., Marc Mallon, Sr. Asst. D.A.

Attorney for Appellee (Palmer): Thomas Ford, III

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

- * Lanny Frazier (Cobb Co.)
- * Travis Wilson (Cobb Co.)
- * Malcolm Reed (Coffee Co.)

FRAZIER V. THE STATE (S08A2035)
WILSON V. THE STATE (S08A1696)
REED V. THE STATE (S08A2009)

IN DISCIPLINARY MATTERS, the Supreme Court has ordered that the following attorney be **publicly reprimanded**:

- * Ashutosh S. Joshi **IN THE MATTER OF ASHUTOSH S. JOSHI (S09Y0429)**

The Court has ordered the **One-Year Suspension** of attorney:

- * Richard R. Harste **IN THE MATTER OF RICHARD R. HARSTE (S09Y0253)**

