



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

Published Monday, April 4, 2016

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PERDUE V. THE STATE (S16A0296)

In another death of a baby at the hands of the mother's boyfriend, the Supreme Court of Georgia has upheld the murder conviction a **Richmond County** jury gave Shawn Perdue for shaking to death 2-month-old Kyliah Mack.

Perdue argued on appeal that his guilty verdict "was contrary to the evidence." But in today's unanimous opinion, **Presiding Justice P. Harris Hines** writes for the Court that the "evidence was sufficient to enable a rational trier of fact to find Perdue guilty beyond a reasonable doubt of the malice murder of Kyliah Mack."

According to the facts of the case, the morning of May 21, 2008, Lakeisha Goodwin asked Perdue, who lived with her, to babysit her 4-year-old daughter and 2-month-old baby girl. It was the first time she had left the children with Perdue for more than 30 minutes. Because Perdue had been out late the night before celebrating his birthday and drinking, Goodwin asked him several times if he was OK to babysit and particularly to "keep the baby." He assured her he would be fine with the children, and Goodwin prepared him a bottle for the baby before she left. When she departed, Kyliah was smiling in her crib.

But sometime after her mother left, Kyliah began to cry and apparently would not stop. At some point, Perdue picked up Kyliah and holding the infant under her arms, shook her hard for three to five minutes without supporting the baby's head. Perdue later admitted to law enforcement officers that the baby's crying had angered him and he shook her until she stopped crying. The baby then began to emit a low hum and vomited. Realizing he had shaken her too hard, Perdue laid her back down in her crib. At around noon, Perdue went to a neighbor's house where he asked Surina Phillips for help, saying the baby was acting lethargic. Phillips, who was

training to be a nurse, ran to the home where she found Kyliah in her crib, cool to the touch. Phillips began to perform CPR on the baby but her efforts were unsuccessful and she called 911. Perdue, who was visibly upset, struck the mailbox with his fist and said, "I'm going to jail." After seeing spilled milk on the floor of the home, Phillips initially thought the baby had choked on milk, and Perdue later told her he thought that's what had happened. When Kyliah arrived at the hospital about a half hour later, she was not breathing and had no pulse. Her body temperature was only 87 degrees, indicating she had been dead for some time. Perdue told the emergency room physician he had given the baby something to drink, left, and come back five to 10 minutes later to find her unresponsive. However, the story did not comport with how long the baby had been dead, and the physician called the Richmond County Sheriff's Office and coroner. When they arrived, Perdue told them he had sought help as soon as he found Kyliah unresponsive. The medical examiner who performed the autopsy, which revealed hemorrhaging in the baby's eyes and brain, said the violent shaking had caused the baby's traumatic head injuries and her death.

Perdue's attorney argued on appeal that the evidence against him was sufficiently close that the trial judge should have exercised his discretion and granted Perdue a new trial. According to the attorney, the trial judge failed to use the proper legal "standard of review" by relying on the inappropriate "sufficiency of the evidence" standard.

It is true, today's opinion says, that "when the record reflects that the trial court applied an incorrect standard of review and, in so doing, failed to exercise its discretion and weigh the evidence in ruling on the merits of claims under Georgia Code sections 5-5-20 and 5-5-21, the appellate court must vacate the judgment and remand the case to the trial court for consideration of the motion under the proper standard of review."

"But that is not the situation in the present case."

Although the order denying Perdue's motion for a new trial mentions the sufficiency of the evidence at trial, "it directly cites the trial court's personal observations of the witnesses and evidence at trial, and expressly acknowledges that Perdue had 'moved this Court to act in its capacity as the thirteenth [juror],' " the opinion says. "The trial court was aware of its responsibility as the 'thirteenth juror' and it exercised its discretion accordingly."

Perdue's attorney for his appeal also argued that Perdue's attorney during his trial rendered "ineffective assistance of counsel" because he knew of the need for expert witnesses who could testify about shaken baby syndrome but failed to call them due primarily to the cost.

"It is well established that the decision as to which defense witnesses to call is a matter of trial strategy and tactics," today's opinion says. "And tactical errors in that regard will not constitute ineffective assistance of counsel unless those errors are unreasonable ones no competent attorney would have made under similar circumstances."

In this case, "the ultimate decision not to retain an expert in the case was based on trial counsel's professional opinion that hiring an expert would not be beneficial to the outcome of the case, that is, that it was a matter of tactics and trial strategy, which has not been shown to be unreasonable," the opinion says. "Simply, Perdue has failed to show professional deficiency on the part of his trial counsel. Consequently, his claim of ineffectiveness must fail."

Attorney for Appellant (Perdue): Charles Jones

Attorneys for Appellee (State): Ashley Wright, District Attorney, Joshua Smith, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Mary Catherin Greaber Asst. A.G.

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

- * Danny Lorenzo Anthony (Taylor Co.) **ANTHONY V. THE STATE (S16A0059)**
- * Curtis Michael Bonman (Richmond Co.) **BONMAN V. THE STATE (S16A0262)**
- * Jaferell Grant (Fulton Co.) **GRANT V. THE STATE (S16A0195)**
- * Gary Mosley (Fulton Co.) **MOSLEY V. THE STATE (S16A0514)**

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorney:

- * Jarlath Robert MacKenna **IN THE MATTER OF: JARLATH ROBERT MACKENNA (S15Y1898)**