



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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CHELEY V. THE STATE (S16A0003)

In a ruling today by the Supreme Court of Georgia, a man in prison for the high-profile **Chatham County** murder of a teenage girl has lost his appeal.

Considering the evidence against Shan Demetrius Cheley, “we conclude that it was legally sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Cheley was guilty of the crimes of which he was convicted,” **Justice Keith Blackwell** writes for a unanimous court.

According to the evidence at trial, at 6:39 a.m. on Sept. 30, 2012, the Savannah Fire Department was called to the scene of a vehicle fire in the neighborhood of Yamacraw Village in downtown Savannah. After finding a Dodge Avenger engulfed in flames, firemen discovered in the car’s trunk the body of a teenage girl, later identified as 18-year-old Amber DeLoach, a former St. Vincent’s Academy student and Islands High School alumna. Her body was wrapped in a blue and tan comforter, and a pair of blue slippers was found at the scene. Police were able to track the Avenger’s license tag to a rental car and discovered the car had been rented by William DeLoach, Amber’s father. His daughter had driven the car that night. Police also acquired surveillance footage from a BP gas station and convenience store in the area. Approximately 25 minutes before the firefighters had responded to the car fire, a man had carried a gas can into the BP station and bought a few dollars of gasoline and a lighter. That video was released to the media, and soon after, then 36-year-old Cheley was identified as the man in the video. On Oct. 4, Cheley agreed to provide a statement to police, in which he said he had spent the night of the murder at a club. While he initially claimed to have driven straight home, he eventually said his car had run out of gas and he’d walked to the BP station to buy gasoline and a

lighter. Police executed a search warrant of Cheley's house and on his bedroom carpet, they found blood which DNA experts later identified as Amber's. The slippers at the scene were Cheley's and her blood was also found on them. An autopsy performed on the girl's body found Cheley's DNA in her vagina and revealed that the cause of death had been strangulation. Cheley's girlfriend, who confirmed that Cheley was the man in the video, said the comforter in which Amber's body had been found was one the girlfriend had given to Cheley. In a subsequent statement to police on Oct. 18, Cheley admitted he had had "rough sex" with the victim but that it had been consensual in exchange for drugs.

A Chatham County grand jury indicted Cheley on charges of malice murder, two counts of felony murder, rape, aggravated assault, arson and possession of cocaine. At his December 2013 trial, Cheley's attorney implied that Amber engaged in risky behaviors and anyone could have killed her after Cheley and she had parted ways on Sept. 30, 2012. But the jury did not believe the defense, and, following a four-day trial, convicted him of all the charges except rape and felony murder committed during the commission of rape. Cheley was sentenced to life with no chance of parole.

In his appeal to the state Supreme Court, Cheley argued the trial court made a number of errors, including by denying his motion to suppress the statements he made to law enforcement officers on Oct. 4 and 18, 2012; by denying his motion to exclude a photograph that depicted the victim's body and other contents found in the car's trunk; by limiting his cross-examination of two jailhouse informants who testified for the prosecution; and by failing to rebuke the prosecutor for her alleged improper closing argument.

In today's opinion, however, one by one, the high court has rejected all of Cheley's arguments. "Upon our review of the record and briefs, we see no error, and we affirm," the opinion says.

Attorney for Appellant (Cheley): Steven Sparger

Attorneys for Appellee (State): Margaret Heap, District Attorney, Jennifer Guyer, Asst. D.A., Lyndsey Rudder, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Mary Catherine Greaber, Asst. A.G.

BLACKWELL V. THE STATE (S16A0270)

A man who pleaded guilty to malice murder for his role in the 2011 gang-related shooting death of a young mother in **Fulton County** has lost his right to withdraw his guilty plea under an opinion today by the Georgia Supreme Court.

Justice Harold Melton writes for the unanimous court that despite a law that allows a defendant to withdraw his guilty plea prior to being sentenced, defendants have a right to waive that right, and that is precisely what Prinson Blackwell did.

"Because the right under Georgia Code § 17-7-93 (b) to withdraw a guilty plea at any time before sentence is pronounced can be waived, and because Blackwell waived that right in connection with his plea in this case, we conclude that the trial court properly denied Blackwell's motion to withdraw his guilty plea," the opinion says.

In April 2011, Blackwell was indicted, along with Kerwin Tate and Xavier Bradford, for the malice murder of 23-year-old Keneisha Carr, criminal street gang activity, felony murder, aggravated assault, attempted armed robbery of Brandon Swann, and gun possession charges related to the murder of Carr and the attempted robbery of Swann. Blackwell alone faced three

additional firearm possession charges by a convicted felon. In August 2012, Blackwell entered a guilty plea to the murder charges as well as several other charges, and agreed to testify truthfully against his co-defendants at their joint trial. The judge indicated that if Blackwell fulfilled his commitment to testify truthfully against Tate and Bradford, he would follow the prosecutors' recommendation to sentence Blackwell to life in prison with the possibility of parole for Carr's murder and give him concurrent sentences for the other charges to which he pleaded guilty.

At Blackwell's guilty plea hearing, the State claimed that once the case went to trial, it would prove that on Jan. 11, 2011, Blackwell, Bradford and Tate went to an Atlanta apartment complex where they attempted to rob Swann, whom they had seen earlier that day at a Stop and Shop store carrying a large sum of money. As Swann walked toward the apartment of his friend, Derrick Carr, Blackwell and Bradford approached Swann with their guns drawn and pistol-whipped him. When Carr opened his door to see what the commotion was, Blackwell fired several shots toward Carr, shooting Carr's wife who was inside their apartment. She died in front of her 4-year-old daughter, state prosecutors allege. Swann was also shot in the buttocks but survived. Blackwell and Bradford then fled to Tate's waiting vehicle. Six days later, Blackwell and Tate were arrested, and a search of the vehicle revealed a .40 caliber Glock handgun and a .22 caliber handgun. According to the State, Blackwell and Bradford are members of the street gang, "Red Kartel," and Tate has been associated with the gang.

The morning the trial was to begin against Bradford and Tate, Blackwell filed a motion to withdraw his guilty plea so his case could also go to trial. Under Georgia Code § 17-7-93 (b): "At any time before judgment is pronounced, the accused person may withdraw the plea of 'guilty' and plead 'not guilty.'" The State opposed Blackwell's motion and asked to change the sentence it was recommending for Blackwell. Blackwell argued that under the law, he had an absolute right to withdraw his guilty plea before the sentence was imposed, and that this right could not be waived. Finding that Blackwell's last-minute motion had caused an "extraordinary disruption of the administration of justice," the trial court denied his motion. The judge also gave Blackwell a harsher sentence than originally recommended, sentencing him not only to life in prison for the murder but to an additional 75 years for his other crimes. Blackwell then appealed to the state Supreme Court.

In today's opinion, the high court notes that while it has recognized in the past that there are certain exceptions to § 17-7-93 (b) and to a defendant's right to withdraw his guilty plea at any time before his sentence is pronounced, "we have not yet decided whether the right to withdraw a guilty plea at any time prior to sentencing may be waived."

But if "there is no constitutional, statutory, or public policy prohibition against waiver, an accused may validly waive any right," the court concludes. "Where no such prohibition against waiver exists, a criminal defendant may make 'a voluntary, knowing, and intelligent waiver' of the right in question." And there is no language in the statute indicating the right to withdraw the guilty plea prior to sentencing cannot be waived.

"If the right to withdraw a guilty plea under circumstances such as those presented here could never be waived, an incentive could be created for a criminal defendant to manipulate the criminal justice system by simply withdrawing his guilty plea on the eve of his co-indictees' trial in order to avoid testifying," the opinion says. "This type of manipulation of the system and disruption to the orderly administration of justice is made less likely by allowing for the waiver of a criminal defendant's right to withdraw his or her guilty plea prior to sentencing. We

therefore conclude that a criminal defendant's right under § 17-7-93 (b) to withdraw his or her guilty plea at any time prior to sentencing is a right that can be waived." And while the Georgia Court of Appeals has held that such a right can never be waived, "this Court is not bound by those decisions, and we hereby expressly overrule them."

As to Blackwell in particular, "a review of the record reveals that Blackwell did in fact knowingly, voluntarily, and intelligently waive this right," the opinion concludes. As a result, the Supreme Court is upholding the trial court's refusal to let him withdraw his guilty plea.

Attorney for Appellant (Blackwell): Kenya Herring

Attorneys for Appellee (State): Paul Howard Jr., District Attorney, Paige Whitaker, Dep. D.A., Kevin Armstrong, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

GEORGIA DEPARTMENT OF LABOR v. RTT ASSOCIATES, INC. (\$15G1780)

In a decision affecting companies that do business with the state, the Georgia Supreme Court has ruled that a state government agency cannot be sued for breach of contract unless there is a written contract and that contract has not yet expired.

Justice Robert Benham writes for a unanimous court that under Georgia law, if a written contract that contains an expiration date and that date is not extended in writing, once the deadline passes, the state cannot be sued for breach of the contract. That is because the doctrine of sovereign immunity – a legal doctrine that protects state government from lawsuits – is considered "waived" by the state, and therefore not applicable, only when there is a valid written contract.

With today's unanimous decision, the high court has reversed a decision by the Georgia Court of Appeals.

The **Fulton County** case stems from a lawsuit filed by a company against the Georgia Department of Labor for terminating its contract. The department claimed that the company, RTT Associates, Inc., failed to deliver software by June 30, 2012, the "Date of Completion," as stipulated in the contract signed by both the company and the state. The state was to pay RTT up to \$247,422.68 upon completion of the product. The contract stated that any amendments to the contract had to be in writing. It also stated that RTT's obligations under the contract continued after the expiration date until it finished the job. RTT claimed that the parties continued working together after the June 30 date to give RTT additional time to deliver a fully functional software program, and that the contract was therefore extended. However, on April 3, 2013, the Department notified RTT in a letter that the company was in breach of the contract for its failure to deliver a product that complied with the contract requirements and that it was immediately terminating the contract. Subsequently, the Department informed RTT in a meeting that it would not be using its software. RTT then sued the Department in Fulton County Superior Court, seeking damages for breach of contract. In response, the State filed a motion requesting the court grant it "summary judgment," which a judge does after determining that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. The trial court granted the motion, finding that because the contract had expired and no written agreement to extend it had been executed, RTT's lawsuit based on work it had performed after the June 30, 2012 expiration date was barred by the doctrine of sovereign immunity under both the Georgia Constitution and Georgia statutory law.

RTT then appealed to the Georgia Court of Appeals, which reversed the trial court’s ruling, finding that evidence of the parties’ continued working arrangement after the deadline expired created a factual dispute over whether the parties had agreed to extend the written contract, therefore preventing the Department from claiming it was protected by sovereign immunity. The Department then appealed to this Court, which agreed to review the case. At issue is whether the state may waive its protection under sovereign immunity if the contract is extended without a signed written document, as its terms require.

In today’s 21-page opinion, “we find RTT has failed to meet its burden of showing waiver of sovereign immunity.”

“Even if the parties’ conduct after the expiration of the contract could be found to demonstrate an agreement between the parties to continue to perform under the original contract, as a matter of law neither that conduct nor the internal documents created by the Department of Labor after the contract expired establishes a written contract to do so,” the opinion says. “Without a written contract, the state’s sovereign immunity from a contract action is not waived.”

The Court of Appeals was wrong to rule “that contractual obligations may survive the end of a written contract; that parties may modify the terms of a written contract by mutual consent and without a writing; and that the contracting parties may waive a provision that the contract may be modified only in writing,” the opinion says. “The Court of Appeals erred in extending general common law rules of contract in a manner that creates contract liability against a state agency for an agreement that does not meet the in-writing requirement for waiver of sovereign immunity.”

A fundamental purpose of sovereign immunity “is the protection of state funds,” the opinion states. “It follows that one of the purposes of the constitution’s requirement that contracts must be in writing in order to invoke the state’s waiver of sovereign immunity is to protect the state from exposure to unanticipated damages. As the Department of Labor asserts, to permit agency employees to create open-ended pledges of the state’s credit that cannot be determined by examination or audit of written agency contracts would potentially violate the state’s budgeting process or even the constitutional provisions regarding the state’s incurring debt.”

“Any work that may have been performed after the contract expired was not performed pursuant to a written contract and cannot support a claim against the Department of Labor due to the bar of sovereign immunity,” the opinion concludes. “While this result may seem harsh, parties are presumed to know the law, and are required ‘at their peril’ to ascertain the authority of a public officer with whom they are dealing.”

Attorney for Appellant (Labor): Samuel Olens, Attorney General, W. Wright Banks, Jr., Dep. A.G., Julie Jacobs, Sr. Asst. A.G., Brittany Bolton, Asst. A.G.

Attorneys for Appellees (RTT): Christopher Anulewicz

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

* James Hood (Clarke Co.) **HOOD V. THE STATE (S16A0064)**

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

* Jennifer L. Wright **IN THE MATTER OF: JENNIFER L. WRIGHT (S16Y0995)**

The Court has accepted a petition for voluntary discipline and ordered the **public reprimand** of attorney:

* Tiffini Colette Bell **IN THE MATTER OF: TIFFINI COLETTE BELL (S16Y1280)**

The Court has **rejected a petition for voluntary discipline** requesting a **one-year suspension** as insufficient considering “the very serious professional misconduct” to which the following attorney has admitted:

* Joanna Temple **IN THE MATTER OF: JOANNA TEMPLE (S16Y1320)**

The Court has granted a **Certification of Fitness to Practice Law**, concluding that the following attorney, who was disbarred in 1998, has been rehabilitated and “is entitled to be certified as fit to practice law in Georgia.”

* Wallace Washington **IN THE MATTER OF: WALLACE WASHINGTON (S16Z1234)**