Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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LEJEUNE V. MCLAUGHLIN, WARDEN (S16A0072)

In a split 4-to-3 decision, the Supreme Court of Georgia has thrown out the conviction and life-without-parole prison sentence given to a man who more than a decade ago pleaded guilty to murder to avoid the death penalty.

In today's opinion, **Chief Justice Hugh Thompson** writes for the majority that, "under our existing due process test for the constitutional validity of guilty pleas, appellant's plea was not entered voluntarily and knowingly and is constitutionally invalid."

On Dec. 27, 1997, Michael Lejeune shot Ronnie Davis one time in the head, then dismembered and burned his remains. Davis's head has never been found. Following Lejeune's indictment in **Fulton County**, the State announced it would seek the death penalty. Lejeune's first trial ended in a mistrial due to the Brian Nichols Fulton County courthouse shooting, which occurred at the same time as Lejeune's trial. Midway through the second trial, Lejeune entered a negotiated plea arrangement in which he agreed to plead guilty to one count of malice murder in exchange for a prison sentence of life without parole, instead of death. In September 2009, Lejeune filed a petition for a "writ of habeas corpus." (Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated. They generally file the action against the prison warden, who in this case was Gregory McLaughlin.) In his habeas petition, Lejeune argued that he was not properly advised of all of his constitutional rights before pleading guilty. Relying on the U.S. Supreme Court's 1969 decision in *Boykin v. Alabama*, Lejeune argued that a criminal defendant must fully understand that by pleading guilty, he is waiving his constitutional right to a trial by a jury, his right to confront his accusers at trial, and his right against compulsory self-

incrimination, meaning the State cannot compel him at trial to take the stand. Lejeune's attorney argued that Lejeune was not informed of, or validly waived, his Fifth Amendment right against self-incrimination at the time of his guilty plea. After the habeas court denied him relief, Lejeune appealed to the state Supreme Court, which concluded that the findings on which the habeas court had based its ruling were not supported by the record. But the high court also concluded that the habeas court had improperly put the burden of proof on the warden rather than on Lejeune so it sent the case back to the habeas court. On remand, the habeas court concluded that Lejeune was sufficiently aware of his right against self-incrimination and therefore he had entered his plea "knowingly and voluntarily." Again, Lejeune appealed to this Court, which agreed to review his case to determine whether Lejeune "knowingly and voluntarily" entered his guilty plea. The high court also asked the parties to address whether it should reconsider its recent precedents which say that the failure to advise a defendant of all three of his constitutional rights before pleading guilty can never be deemed "harmless error," which is an error that does not affect a party's rights or the case's outcome.

"This Court has, for many years now, held that for a plea to be constitutionally valid, a pleading defendant must be informed of his three '*Boykin*' rights," today's majority opinion says. And in response to Lejeune's first appeal, "this Court held that for a plea to be knowingly and voluntarily entered, a pleading defendant was required to know his 'essential constitutional protections,' including his right against self-incrimination. Under this due process test, appellant's [i.e. Lejeune's] plea was constitutionally invalid." The majority is joined by Presiding Justice P. Harris Hines, Justice Robert Benham, and Justice Carol Hunstein.

In the dissent, **Justice David Nahmias** writes that instead of following the state Supreme Court's more recent precedents, "I would follow our earlier holding in *Goodman v. Davis* and the similar approach taken almost uniformly by federal and state appellate courts across the country. I would hold that the trial court's failure to ensure that Lejeune understood his right against self-incrimination at trial before he entered his guilty plea was harmless error because the record as a whole shows that his plea was knowing and voluntary under the totality of the circumstances and therefore constitutionally valid." Joining in the dissent are Justice Harold Melton and Justice Keith Blackwell.

Nothing in this opinion prevents the State from retrying Lejeune.

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PATTERSON v. THE STATE (S15G1303)

In another split 4-to-3 decision, the Georgia Supreme Court has upheld convictions for aggravated assault and simple assault that a man received in **Whitfield County** for driving his van into his girlfriend's son, pinning him against a mobile home.

With today's majority decision, written by **Presiding Justice P. Harris Hines**, the high court has upheld a ruling by the Georgia Court of Appeals. At issue in this case is whether the state's simple assault statute requires, or does not require, that a defendant have the "specific intent" to cause a victim apprehension of injury. The majority has ruled that it does not require specific intent while the minority contends that it does.

According to briefs filed in the case, on Nov. 1, 2011, Ricky Eugene Patterson drove home to the trailer where he lived with Wanda Bartley. Bartley's adult son, Nathaniel Silvers, was also at the trailer when Patterson arrived. Patterson and Bartley almost immediately began arguing, and Patterson went into the home, took a roast out of the oven and threw it out the back door, according to briefs filed in the case. He also threw a cell phone through a glass gun cabinet. Bartley and her son urged Patterson to leave. Patterson went outside, got into his van and at the moment Silvers walked off the porch, he shifted the van into low gear, revved the engine, and drove rapidly toward Silvers. The van struck Silvers and pinned him to the side of the trailer, resulting in internal injuries that required him to stay in the hospital for three days.

Patterson was charged with four counts of aggravated assault, two counts of aggravated battery, and one count of disorderly conduct. At trial, the court denied Patterson's request that jurors be instructed that simple assault, reckless conduct, and reckless driving were available for their consideration as "lesser included" – or less serious – offenses than the aggravated assault charge. The judge stated she was not inclined to give the instruction about any lesser included offense because Patterson also requested a jury charge that the incident had been an accident, which had been his defense throughout the trial.

The jury convicted Patterson of the lesser included offense of simple assault as to two of the aggravated assault charges, acquitted him of the third count of aggravated assault, and convicted him of the fourth count of aggravated assault. This fourth count charged that Patterson had committed aggravated assault by placing another in reasonable apprehension of immediately receiving a violent injury with an object which, when used offensively against a person, is likely to and actually does result in serious bodily injury. Patterson was sentenced to 20 years in prison.

On appeal, the Georgia Court of Appeals affirmed his convictions. Patterson then appealed the Court of Appeals ruling to the state Supreme Court. In granting Patterson's petition for writ of certiorari (asking the Supreme Court to review the lower appellate court's ruling), the high court asked the parties to answer two questions: (1) Did the Court of Appeals err when it concluded that simple assault under Georgia Code Section 16-5-20 (a) (2) requires no specific intent to cause injury or apprehension of injury? (2) If so, did the Court of Appeals err when it held that the trial court properly refused to charge the jury in this case on reckless conduct and reckless driving as lesser included offenses of aggravated assault?

Georgia Code Section 16-5-20 (a) (2) states that a person commits the offense of simple assault when he or she, "Commits an act which places another in reasonable apprehension of immediately receiving a violent injury." The statute does not say anything specific about the intent with which such an act must be done.

The Georgia Supreme Court "has on multiple occasions noted that the crime of simple assault as set forth in Georgia Code Section 16-5-20 (a) (2) 'does not require proof of specific intent,'" today's 10-page majority opinion says. "The State need only prove that the defendant possessed a 'general intent to injure' with the weapon.'"

Crimes requiring "specific intent" generally require that a person have a bad, or at least reckless, purpose. Crimes requiring "general intent" tend to consider only whether the person intended to do the act that he did. In Patterson's case, the Court of Appeals was correct in determining that "the State was required to show that Patterson intended to drive his van in the direction of Silvers, that Silvers was placed in reasonable apprehension of injury, and that the van was an object that when used offensively against a person, was likely to or actually did result

in serious bodily injury." But the State "was not required to show an intent to injure or that Patterson intended to place Silvers in reasonable apprehension of injury."

When faced with a claim that specific intent to cause apprehension is required, "this Court has squarely stated that, 'All that is required is that the assailant intend to commit the act which in fact places another in reasonable apprehension of injury, not a specific intent to cause such apprehension,'" the majority states. "And this conclusion regarding the requirements of 16-5-20 (a) (2) in demanded by the simple fact that no requirement of a specific intent is set forth in [the statute]. The statutory language is plain and unequivocal; a person who commits an act that places another in reasonable apprehension of receiving a violent injury has committed simple assault under 16-5-20 (a) (2)."

Despite this Court's precedents, "Patterson urges that this Court should nonetheless interpret 16-5-20 (a) (2) to include a requirement that the defendant have the specific intent to cause the victim to be apprehensive of receiving a violent injury," the majority states. "But, despite this request, 16-5-20 (a) (2) simply does not state that a defendant must *intend* to place the victim in reasonable apprehension of receiving a violent injury."

Joining the majority are Chief Justice Hugh Thompson, Justice Robert Benham, and Justice Carol Hunstein.

But the dissent disagrees. **Justice Keith Blackwell** writes that beginning with its 1998 decision in *Dunagan v. State*, it is true that this Court has held that Georgia's simple assault statute requires only a general intent to do the act that happens to produce a fear of injury. But it has done so "without any meaningful analysis of the relevant statutory context."

After conducting such an analysis, "I would overrule *Dunagan* and its progeny to the extent that they construe Georgia Code Section 16-5-20 (a) (2) to require only an intent to do the act that places another in reasonable apprehension of an imminent and violent injury," says the 39-page dissent, which is joined by Justice Harold Melton and Justice David Nahmias. "Consistent with the most natural and reasonable understanding of the statute, I would hold that it instead requires a specific intent either to inflict injury or to arouse an apprehension of injury."

The dissent rejects the claim that ***Dunagan*** should be followed merely out of deference to prior opinions issued by this Court. According to the dissent, the rule announced in ***Dunagan*** is not only incorrect but it also fails to provide a clear and workable guide for Georgians. "Even if an exceedingly careful and conscientious person were to take every reasonable precaution to ensure that his act would neither injure another nor arouse apprehension of injury, if he missed something through no fault of his own, and if his act, as a result, happens to produce a reasonable apprehension of imminent and violent injury, he would appear to have committed a simple assault under *Dunagan* and its progeny," the dissent says. "Because a majority of the Court has seen fit to stand by our erroneous precedents, however, if the original and ordinary meaning of the statute is to prevail, it now will require further action by our General Assembly."

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