



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



SUMMARIES OF OPINIONS

Published Monday, November 7, 2016

Please note: *Opinion summaries are prepared by the Public Information Office for the general public and news media. Summaries are not prepared for every opinion released by the Court, but only for those cases considered of great public interest. Opinion summaries are not to be considered as official opinions of the Court. The full opinions are available on the Supreme Court website at www.gasupreme.us.*

SHEARD V. THE STATE (S16A1291)

A man who has already served nearly 20 years of a life prison sentence has had his murder conviction reversed under a decision today by the Supreme Court of Georgia.

Elliot Sheard, who was found guilty in 1998 by a **Fulton County** jury for his role in the stabbing death of Charles Elder, is entitled to a new trial, **Justice Carol Hunstein** writes for a unanimous court. Because critical parts of the transcript from his trial have never been found, Sheard was effectively denied his right to appeal, and “where the missing transcript prevents adequate review of the trial below, a new trial is warranted,” the opinion says.

According to briefs filed in the case, Elder, who was in his mid-60s and known as “Mr. C,” lived for many years in the former Vesta Village apartment complex in College Park. From his apartment, Elder ran a “shot house,” illegally selling alcohol and cigarettes to neighbors. Due to the nature of his business, Elder only accepted cash. It was a successful business, and Elder, himself an alcoholic, often boasted about how much money he made and flashed it around, especially when he was drunk. It was well-known that he kept large amounts of cash in his apartment in various places, including in a brown paper bag, a chest of drawers and a vacuum cleaner. Witnesses remembered the paper bag containing as much as \$10,000. Elder also kept large amounts of money in his pockets and wallet. When Elder was open for business, he kept the solid wood interior door to his apartment open and the glass storm door closed and locked. Customers would knock on the glass door to be let in. Elder sold most of his alcohol on the weekends, particularly Sundays when the stores did not sell liquor.

Elliot Sheard, whose street name was “New York,” and Craig Sheard, along with Dorothy Grier were familiar with Elder, knew about his cash, and were known to ride around the

Vesta Village apartments in Grier's white BMW sedan with its gold rims. In the weeks leading up to Elder's death, witnesses overheard the three discussing a plan to rob Elder and use the money to "get out of town."

In December 1997, Herbert Burroughs was in the apartment complex visiting his girlfriend and their baby. Burroughs had met Grier and Elliot and Craig Sheard at the complex months earlier and on this particular day, overheard Grier say to the Sheards they should rob "Mr. C" so Elliot could get out of town. Burroughs later testified that at Elder's suggestion, he returned to his girlfriend's apartment to get a hat for his daughter and a jacket for himself because it was getting chilly outside. He said he then returned to Elder's apartment because he had a "bad feeling" when he saw Elliot Sheard and the other two pull up in Grier's car. Burroughs watched as Elliot and Craig got out of the car and went into Elder's apartment while Grier drove away. Through the glass door, Burroughs then saw Craig Sheard grab Elder around the neck and stab Elder in the neck with a knife. Elder fell, and Craig Sheard jumped on him and continued stabbing him. According to Burroughs, the two men then left the apartment with a bag and ran in the direction where Grier had driven. Burroughs said he saw Craig Sheard, who was covered in blood, throw a knife in an adjacent yard. Days later, when an apartment manager forced his way into the apartment, Elder was found dead on the living room floor from more than 50 stabbings, one of which severed his jugular vein. Following the murder, the two men and Grier left the area. Elliot Sheard fled to New York, where he was later apprehended. In his statement to police, Sheard acknowledged that he knew Elder but said he had left Atlanta with \$19,000 to avoid a pending drug charge.

Following a joint trial, in which Grier was acquitted and Craig Sheard was convicted of murder and other crimes, Elliot Sheard was convicted and sentenced to life plus 40 years in prison. He filed a motion for new trial in October 1998, but no action was taken on the motion until 2004 when Sheard was appointed an attorney to represent him in his appeal. That attorney discovered that portions of the trial transcript were missing, and during subsequent years, while some portions of the transcript were recovered, the entire transcript was never found. In March 2014, following numerous hearings, the trial court denied Sheard's motion for new trial. Sheard then appealed the trial court's denial to the state Supreme Court.

"A person convicted of a crime has a right to appeal," today's opinion says. And courts in this state "have held that the failure of the state to file a correct transcript...effectively deprives the defendant of his right to appeal."

"First, and most obviously, the age of this appeal raises the specter of due process concerns and supports Sheard's argument for a new trial," the opinion says. "Despite nearly two decades, the State has been unable to complete the transcript, during which the court reporter responsible for the trial has died, Sheard has been appointed multiple attorneys for his appeal, and memories have undoubtedly faded.

"Second, while certain portions of a trial...need not be transcribed in non-death cases, the jury charge – which is missing here – is a crucial portion of trial in which jurors are instructed on the applicable law, on how to evaluate the evidence, and on how to deliberate and reach a verdict, and Sheard alleges harm as a result of the missing transcripts.

"Third, and finally, we are concerned that forcing appellate counsel – who was not involved in the original trial – to divine error without the aid of a transcript is not only fruitless, but also hinders counsel's ability to adequately and zealously represent Sheard on appeal.

“Based on the foregoing, the missing portion of the transcript in this case warrants a new trial, and the trial court erred when it denied Sheard’s motion for new trial,” today’s opinion says. “Accordingly, the judgment of the trial court is reversed.”

Attorney for Appellant (Sheard): Matthew Winchester

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

CREWS V. THE STATE (S16A1003)

The Supreme Court of Georgia has unanimously upheld the murder conviction and life-without-parole prison sentence given to a young man, J’Quante Crews, for his role in the 2009 murder and armed robbery of former world boxing champion, Vernon Forrest.

In this high-profile case, **Justice Harold Melton** writes for the high court that the “evidence was sufficient to enable a rational trier of fact to find Crews guilty of all of the crimes of which he was convicted beyond a reasonable doubt.”

According to the facts at Crews’ **Fulton County** trial, the night of July 25, 2009, Crews, 25, was at a Chevron gas station near the Mechanicsville neighborhood of southwest Atlanta, along with DeMario Ware, 20, and Charmon Sinkfield, 30. The three were sitting in Ware’s red Pontiac, waiting to meet two more of their friends to go to a strip club together. While they waited, Forrest, then 38, pulled into the Chevron in his Jaguar XS to put air in his tires. With him was a 10-year-old boy – a friend’s son. The two were on their way to the home of Forrest’s mother. While the child went into the convenience store to use the restroom, Sinkfield noticed Forrest and his expensive car. After discussing the situation with Ware and Crews, Ware got out of the car with the purpose of robbing Forrest. Meanwhile Crews, who was to serve as the getaway driver, drove the red Pontiac out of the service station and waited to meet up with Ware after the robbery. Sinkfield got into the car of the two friends who were joining them to go to the strip club, and those three also left the gas station.

As Forrest was bending over while putting air in his tire, Ware walked over and stood over him with a gun, ordering him to “lay it down” and saying, “I got you.” Ware then stole Forrest’s gold Rolex watch and “world championship boxing” ring and ran away. Forrest grabbed his own gun and began running after Ware to retrieve his stolen jewelry. Ware hid behind an apartment complex gate until Forrest passed by, then called Crews to come get him. After learning where Ware was hiding and that Forrest had been chasing him, Sinkfield and the others headed to Ware’s location. When they arrived, Sinkfield got out of the car and confronted Forrest. The two exchanged words with their guns drawn, but at some point, Forrest apparently believed they’d reached a resolution, and he turned to walk away. As he did, Sinkfield shot Forrest in the back several times, killing him. Crews then drove to where Ware had been hiding and picked him up. He then drove toward the scene of the shooting and picked up Sinkfield who had run toward some railroad tracks after killing Forrest.

In April 2012 in a separate trial, Crews was found guilty of malice murder, two counts of felony murder based on aggravated assault and armed robbery, aggravated assault with a deadly weapon, armed robbery and two gun charges. He was sentenced to life without parole plus 10 years for the gun crimes. (Ware and Sinkfield were also convicted and sentenced to life in prison with no chance of parole.) Crews then appealed to the Georgia Supreme Court, arguing his

convictions should be reversed due to juror misconduct, and the trial judge erred by allowing in as evidence expert testimony from a lay witness.

In today's opinion, "we find Crews' challenges to his convictions to be without merit. Thus, we affirm his convictions."

Due to a sentencing error, however, the Supreme Court has thrown out part of the trial court's ruling and is sending the case back to the trial court to resentence him. Specifically, the court needs to additionally sentence Crews for armed robbery.

Attorneys for Appellant (Crews): Lauren Shubow, Jessica Seares, Office of the Public Defender

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., Meghan Hill, Asst. A.G.

CITY OF WAYCROSS V. PIERCE COUNTY BOARD OF COMMISSIONERS ET AL. (S16A1019)

The City of Waycross, at least for now, has lost its battle against **Pierce County** in its effort to cut off water and sewer services to homes and businesses located on a section of property the City annexed in the 1980s but the Legislature later returned to Pierce County.

In today's unanimous decision, written by **Chief Justice Hugh Thompson**, the Georgia Supreme Court has upheld a Pierce County judge's decision granting a pre-trial injunction that prevents Waycross from cutting off water and sewer services. Some residents and businesses say that doing so would force them to move from the formerly annexed area.

The City of Waycross, which is located primarily in **Ware County**, annexed property in Pierce County in the 1980s before building on it a component of its wastewater treatment facility. The City and Pierce County signed "service delivery strategy agreements" in 1999, in which the City agreed to provide water and sewer services to the eight residents and businesses in the annexed area. The residents and businesses in turn paid the City fees that covered the cost of the services.

In 2015, the legislature passed House Bill 523, which was signed by the governor and became effective July 1, 2015. The bill amended the City's charter so that no portion of the City would "include any territory within the boundaries of Pierce County."

The City sued to have House Bill 523 declared unconstitutional and in the meantime to stop its enforcement. But the trial court ruled against Waycross, in part because the court determined the City was still authorized to provide water and sewer services to the formerly annexed area.

In July 2015, the City notified businesses and homeowners located in the area that new, higher user fees would be charged. The County then filed a countersuit, alleging that the new fees were arbitrarily higher than fees charged to others in Ware County and therefore violated Georgia's Service Delivery Strategy Act (Georgia Code § 36-70-20). In the countersuit, Pierce County asked the court for a pre-trial injunction prohibiting Waycross from implementing the new fees.

The next month, the City of Waycross passed a resolution to halt the delivery of water and sewer services to properties located in Pierce County. In response, Pierce County amended its countersuit asking that Waycross be prohibited from discontinuing its water and sewer

services. Subsequently, the trial court allowed a resident, Kelly Thrift, and a business, Coastal Forklift Hydraulics, Inc., to intervene as parties. Both alleged they would have to relocate from the formerly annexed area if Waycross was allowed to discontinue the services.

Following a hearing, the trial court ruled in favor of Pierce County and the additional parties by granting the pre-trial injunction that prohibited Waycross from cutting off water and sewer services to properties in Pierce County. The trial court found that other than the City of Waycross, no other governmental entity was capable within the near future of providing the services to the de-annexed area. In support of the “interlocutory” – or pre-trial – injunction, the trial judge determined that Pierce County, Thrift and Forklift Coastal Hydraulics would suffer irreparable harm if the City of Waycross discontinued water and sewer services in the affected area; that the harm to the County and intervenors outweighed any possible harm to the City because the City failed to show that the revenues it received as a result of providing services to the area were less than the cost of providing the services; that the County and intervenors showed a substantial likelihood that they would prevail at trial on the merits of the case because once a municipality provides water and sewer services, it cannot discontinue the services without justification; and that the public interest would be served best by granting a pre-trial injunction to prohibit the City of Waycross from discontinuing water and sewer services in the formerly annexed area. The City of Waycross then appealed to the Georgia Supreme Court.

“We find no abuse of the trial court’s broad discretion in granting the interlocutory injunction,” today’s opinion says.

Attorney for Appellant (City of Waycross): Richard Currie

Attorneys for Appellee (Pierce County): Willis Blacknall, III, Walter Elliott, William Elliott

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

* Norman Buford (Richmond Co.)

BUFORD V. THE STATE (S16A1353)

(The Court has upheld Buford’s malice murder conviction and life prison sentence. But the trial judge erred by also sentencing him for felony murder. Since there was only one victim, his life sentence for felony murder must be thrown out.)

* Xzarious Terrell (Fulton Co.)

TERRELL V. THE STATE (S16A0849)

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for voluntary discipline and ordered the **suspension until further order of the Court** of attorney

* Christopher Mark Miller

IN THE MATTER OF CHRISTOPHER MARK MILLER (S17Y0381)

The Court has accepted a petition for voluntary discipline and ordered the **18-month suspension with conditions for reinstatement** of attorney:

* Bonnie Monique Youn **IN THE MATTER OF BONNIE MONIQUE YOUN**
(S16Y1178)