



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, April 17, 2017

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.*

THE STATE V. CLARK (S17A0350)

When a man goes on trial in **Fulton County** on charges that he brutally beat his girlfriend with a golf club, then stabbed her to death, the jury will hear nothing about the man's videotaped confession to the crime.

Under a decision today, written by **Justice Robert Benham**, the Supreme Court of Georgia has upheld a lower court's decision and ruled unanimously that the man's statement was not "voluntary," as the law requires, and it must therefore be suppressed.

According to the facts, at 1:17 the afternoon of March 4, 2008, William Clark called 911 and said that a woman had been killed and that he was "no longer armed." When responding officers arrived, they saw Clark coming out of an apartment on Angier Avenue, covered in blood and bleeding from the hand. Officers handcuffed Clark and placed him in the back of a police vehicle. After receiving a request from the responding officers for a homicide unit, Atlanta Police Detective J. D. Stephens arrived at the scene where inside the apartment, he found the body of Deborah Anne Jeffries with more than 20 stab wounds to her chest. The murder weapon, a kitchen knife, was at the scene. Clark had cut his fingers, presumably on the knife, and was bleeding. Inside the vehicle, Stephens read Clark his *Miranda* rights from the back of a card the detective kept around his neck. Those rights, created as a result of the U.S. Supreme Court's 1966 ruling in *Miranda v. Arizona*, include: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you." Stephens then asked Clark if he lived in the apartment, who the dead woman was, and who had killed her. Clark replied that he lived in

the apartment, that the victim's name was Deborah Jeffries, and that she was his girlfriend. He said he didn't remember who killed her because he had blacked out. Stephens told Clark that he was being taken to Grady hospital in Atlanta for treatment of his injuries and that he would like to talk to him afterward. Clark replied he would like to talk to Stephens.

Four hours later, after Clark was released from the hospital, he was brought to the Atlanta Police Department's homicide office at about 5:00 p.m. Stephens walked into the interrogation room and Clark began talking and did so continuously for seven minutes. Stephens later said that police training encourages officers to let suspects talk, according to briefs filed in the case. But after seven minutes, Stephens said he interrupted Clark and briefly left the room to begin video-recording the conversation. Less than 30 seconds after Stephens hit the "record" button, Clark said that what he was about to say was "off the record." Stephens responded, "Yeah." Clark then proceeded to talk about his three-year history with Jeffries. For most of the recorded statement, he disparaged her character, claiming she sold drugs, worked as a prostitute, and stole guns from houses she cleaned. He also claimed she used her relationships with white men to antagonize him. At about 22 minutes into the recorded conversation, Stephens reminded Clark that he had been read his *Miranda* rights and Clark agreed and kept talking. Stephens asked him how his argument with Jeffries had escalated into a murderous fight. Toward the end of the interview, Clark said he was starting to feel faint and put his head on the table. Stephens asked if he was OK and said they could take him back to the hospital, but Clark refused. Clark then admitted he had killed Jeffries, striking her with a golf club and stabbing her. Clark again put his head on the table. When Clark said his stomach was hurting, Stephens stopped the tape and called an ambulance at 5:50 p.m. Paramedics arrived, took Clark's blood pressure and pronounced him fine. Stephens then continued the interview at 6:11 p.m. but did not record it. Stephens ended the interview at 6:49 p.m.

A grand jury indicted Clark for murder, aggravated assault and possession of a knife during the commission of a felony. In June 2016, his attorney filed a motion to suppress the statement he gave while in custody at the Atlanta Police Department's homicide office. Following a hearing, in August 2016, the trial judge suppressed Clark's custodial statement, stating that while he believed Stephens had read Clark his *Miranda* rights, he did not believe Clark understood those rights. The trial court's written order stated that Clark could have reasonably assumed that Stephens' affirmative response of "Yeah" meant that what Clark was about to say would indeed be treated as "off the record." Stephens "made little or no effort to ensure that [Clark] understood his rights and that his waiver of rights was knowing and intelligent," the judge said. The State then appealed to the Georgia Supreme Court.

"A defendant's waiver of the right to remain silent during a custodial interview must be made 'voluntarily, knowingly and intelligently,'" today's opinion says, citing the 1966 *Miranda* decision. The inquiry into whether a person's waiver of his rights is voluntary has "two distinct dimensions." First, the relinquishment of the rights must be the product of a "free and deliberate choice rather than intimidation, coercion, or deception." Second, it must be made with "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."

"This Court has held that when an accused has received *Miranda* warnings, but subsequently the police officer affirmatively states that an accused's custodial statements will be kept confidential, then the resulting statements are inadmissible at trial," the opinion says, citing

the Georgia Supreme Court's 2007 decision in *Spence v. State*. The trial court cited *Spence* in granting Clark's motion to suppress his statement.

While the phrase "off the record" is often used as a journalistic term of art, it is also used in everyday parlance to signify the speaker's desire for the listener to keep his words confidential, the opinion says. A New Jersey superior court ruled in 2003 in *State v. Pillar*, a case with similar facts to this case, that an officer's agreement to speak with the defendant "off the record," after having read him his *Miranda* rights, "eviscerated" the prior *Miranda* warnings and rendered any waiver of the defendant's rights invalid. "Certain promises, if not kept, are so attractive that they render a resulting confession involuntary," the *Pillar* court reasoned. "A promise that any statement will not be used against the accused is such a promise."

"Detective Stephens' affirmative agreement to keep the discussion 'off the record' had the effect of nullifying the *Miranda* warning previously given to appellee [i.e. Clark]," today's opinion says. At a bare minimum, the moment Clark said he wanted to talk off the record, Stephens should have made it clear that anything he said to police would be considered "on the record."

"The trial court did not err when it granted appellee's motion to suppress on the ground that the State failed to prove appellee's police station statements, which were made following his 'off the record' comment, were voluntary."

Attorneys for Appellant (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., F. McDonald Wakeford, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

Attorneys for Appellee (Clark): Kenneth Kondritzer, Jennifer Lubinsky

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

* Eric Robius Austin (Fulton)

AUSTIN V. THE STATE (S17A0284)

(While the Court has upheld Austin's conviction and life prison sentence for the shooting death of Sade Danmola, the trial court erred in merging possession of a firearm by a convicted felon into the malice murder verdict for sentencing purposes. The high court has therefore vacated that part of the order and is sending it back to the trial court to also sentence him on the firearm possession count.)

* Cordaro Burrell (Fulton Co.)

BURRELL V. THE STATE (S17A0358)

* Joe Al Carr (Fulton Co.)

CARR V. THE STATE (S17A0561)

* Clarence Clark (Fulton Co.)

CLARK V. THE STATE (S17A0347)

* Ladarrius Jones (Fulton Co.)

JONES V. THE STATE (S17A0348)

* Don McCray (Fulton Co.)

MCCRAY V. THE STATE (S17A0315)

* Jahvon Pittman (Fulton Co.)

PITTMAN V. THE STATE (S17A0290)

(The Court has upheld Pittman's murder charge and

life prison sentence, but the trial court erred in merging his conspiracy to commit armed robbery verdict into felony murder, as these two crimes require proof of an element that the other does not. Pittman has yet to be sentenced on the conspiracy count so the Court has vacated that part of the sentencing order and is sending the case back for resentencing.)

* Jamell Amone Richmond (Gwinnett Co.) **RICHMOND V. THE STATE (S17A0288)**

* Antonio Shaw (Fulton Co.) **SHAW V. THE STATE (S17A0352)**

* Jamarrcus Rhashad Sullivan (Floyd Co.) **SULLIVAN V. THE STATE (S17A0664)**

(The high court has upheld Sullivan's murder conviction and life prison sentence, but in another merger error, the trial court improperly merged his felony murder count into malice murder for sentencing purposes, instead of vacating it. And the trial court erred in failing to merge aggravated assault with intent to rob and kill into the armed robbery and murder verdicts. The lower court also should have merged aggravated battery into malice murder. The case is being sent back to the lower court for resentencing.)

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

* Richard R. Buckley, Jr. **IN THE MATTER OF: RICHARD R. BUCKLEY, JR. (S17Y0418)**

The Court has accepted a petition for voluntary discipline and ordered the **six-month suspension** of attorney:

* Jeffrey L. Sakas **IN THE MATTER OF: JEFFREY L. SAKAS (S17Y0871)**

The Court has **rejected a petition for voluntary discipline** as too lenient from attorney:

* John Benneth IWU **IN THE MATTER OF: JOHN BENNETH IWU (S17Y0898)**