



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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JOHNSON V. THE STATE (S17A0768)

A man convicted of killing his girlfriend's 2-year-old daughter in **Effingham County** will remain in prison for life with no chance of parole under an opinion today by the Supreme Court of Georgia.

While Kevin Johnson argued that the evidence was insufficient to support his murder conviction, a unanimous court has found otherwise. "Contrary to Johnson's contention, the evidence was plainly sufficient to enable a rational trier of fact to find beyond a reasonable doubt that Johnson was guilty of the crimes of which he was convicted," **Justice Britt C. Grant** writes in today's opinion.

According to briefs filed in the case, beginning in September 2009, Johnson lived with Angela Rocha and her daughter, Melanie Rose Haynes, on Aspen Drive in Rincon, GA, which is part of metropolitan Savannah. While Rocha worked, Johnson took care of the toddler.

The opinion lays out the facts as following: "On February 8, 2010, Johnson called Rocha and told her that Melanie had fallen and had a bruise on her head. Rocha testified that her child appeared normal when she returned from work that evening and before she left for work the next morning. The next day, Johnson again called Rocha while she was at work. This time, he reported that Melanie was vomiting. Johnson called Rocha later that same day and told her Melanie was having trouble breathing. On Rocha's instruction, Johnson called 911. When the ambulance arrived, an emergency medical technician found Melanie not breathing and without a heart rate. She was cold, pale, and bluish. There were no signs or smells of vomit in the house or

on Melanie's breath or body. Although first responders attempted to revive Melanie, she never regained consciousness" and died at Memorial Medical Center from her injuries.

The next day, Johnson agreed to be interviewed by law enforcement officers at the Effingham County Sheriff's Office. He told investigators that the little girl had hit her head by falling off the sofa twice and falling in the bathtub. Two days later, Johnson was arrested and read his *Miranda* rights, and he again told investigators the toddler had fallen twice off the couch and in the bathtub. But instead of saying she had hit the left side of her head in the bathtub, as he had said initially, this time he said she had hit the right side of her head. Two weeks later, after asking to speak to a particular investigator, he told her the police had "ruined his social life." When asked how, he incongruously responded that he had been swinging Melanie around when she accidentally hit her head hard on an open dresser drawer. At trial, however, Johnson said that statement had been a "complete lie" which he had told because he felt threatened and intimidated by another investigator who had a reputation "for beating people." By the time he testified at trial, his story was that he assumed Melanie had jumped off a dresser into a tub of balls.

Two expert witnesses testified for the State that Johnson's explanations did not account for the severity of the child's injuries, that her death was caused by intentionally inflicted traumatic brain injury, and that it could not have been caused by an accident or simple fall.

Following his trial in February 2012, Johnson was convicted of all the charges for which he'd been indicted, including malice murder, aggravated battery resulting in disfigurement, and cruelty to children. He was sentenced to life without parole.

In addition to appealing his convictions and sentence on the ground that the evidence was insufficient, Johnson also argued the trial court had erred by admitting his statement about swinging Melanie around when she hit her head. Johnson claimed that he had made the statement while in custody but that he had not been re-advised of his *Miranda* rights. "Because his statement was spontaneous and unsolicited, Johnson's *Miranda* claim fails," today's opinion says. Johnson also argued that the investigator who made him feel intimidated had threatened him, and the statement had therefore been coerced. That claim also fails, the opinion says. "The record does not support Johnson's claims that he was threatened."

Attorney for Appellant (Johnson): James Weston

Attorneys for Appellee (State): Richard Mallard, District Attorney, Keith McIntyre, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

STUCKEY V. THE STATE (S17A1175)

The Georgia Supreme Court has upheld the murder conviction and life prison sentence given to a young man who was 15 years old when he stabbed, beat and set on fire his grandmother and her house in **Douglas County**.

In today's unanimous opinion, **Justice David Nahmias** writes that "we have reviewed the record, and we conclude that the evidence presented at trial and summarized above was sufficient to authorize a rational jury to find Appellant guilty beyond a reasonable doubt of the crimes for which he was convicted."

According to the briefs of both parties, Dominique Javonte Stuckey had an unstable childhood growing up, stemming in part from his family's disapproval of his homosexuality. When he was a child, Stuckey lived with his mother, then with his father in Tennessee. He also

lived in New York, South Carolina and Hinesville, GA. In 2009, when he was 15, Stuckey was living with his grandmother, Velma Stuckey, in Douglasville. Although she wanted to help the boy and had taken him in before, she was very religious and allegedly did not approve of his sexuality, according to the briefs. She particularly did not approve of his talking to a number of men on the Internet, many of whom were much older than the teen. Stuckey communicated with the men on a variety of web sites, including MySpace, Black Gay Chat (known as "BGC") and Yahoo Instant Messenger, as well as by text and telephone. Stuckey posted pictures of himself on the websites and engaged in chats of a sexual nature. A cousin introduced him to another 15-year-old boy, hoping to lure Stuckey away from meeting strangers on the Internet. Stuckey and the boy began contacting each other by cell phone and through BGC. In addition, they exchanged nude photos. Weeks before their first face-to-face meeting, Stuckey allegedly told the other teen that his grandmother did not like him because he was gay. He told his cousin that his grandmother was going to kick him out of her house due to his sexuality.

The evening of March 28, 2009, Stuckey went to Arbor Place Mall to meet the other 15-year-old. The intention, according to briefs, was that this was an initial meeting and that later the two would "hook up." Late that Saturday night, Stuckey reached out to the boy by text message and asked him to hang out. But the other teen was babysitting and could not. They also communicated on BGC that night. Throughout the night, Stuckey was also communicating with a student at the University of West Georgia, whom Stuckey had met the previous year on Black Gay Chat. The student later testified that during the early morning hours of March 29, 2009, he and Stuckey had been communicating on BGC and that by 5 or 6 a.m., they had made plans for Stuckey to visit the student. After looking up directions to the student's house in Carrollton, Stuckey took his grandmother's black SUV and began driving to Carrollton. But at some point, he contacted the student, told him he had gotten lost, and had to get back home before his grandmother woke up. Phone records tracked his progress toward Carrollton, then showed he went back to Douglasville. On his way back, at about 8:30 a.m., Stuckey stopped at One Stop Convenience store on Chapel Hill Road where video surveillance showed him paying for \$1 worth of gasoline. At 9 a.m., Stuckey called 911 and reported his grandmother's house was on fire. He claimed he had left the house and when he returned, the house was in flames, with his grandmother and two dogs inside. He also told the 911 dispatcher that someone had broken into the home and that his TV was missing. Upon arrival, firefighter Mike Shadix noticed that most of the smoke was coming from the top of the house. Shadix found Velma Stuckey's body on the floor of her bedroom. There were bloodstains on the bed coverings near her head. When her body was moved, investigators found under her the head of a garden hoe covered in blood. According to the medical examiner who later conducted the autopsy, Mrs. Stuckey had sustained a stab wound to the left side of her head, a stab wound to the left eye, and a stab wound to the right cheek. He believed she was set on fire while still alive because he found significant amounts of carbon monoxide in her bloodstream, meaning she was still breathing. He concluded her cause of death was "blunt and sharp force injuries of head with smoke and soot inhalation."

Law enforcement officers discovered that weeks before the murder, Stuckey had asked his cousin how to kill someone and get away with it. On his computer, law enforcement found he'd conducted an Internet search: "how+to+kill+someone+without+getting+caught." Although Stuckey was initially placed in the custody of the Department of Family and Children's Services, he was later arrested and charged with malice murder and arson in the first degree. Stuckey gave

two separate statements to law enforcement: Initially he denied all involvement in the murder and arson. But eventually, he claimed that his boyfriend had attacked his grandmother and it had been the boyfriend's idea to do so. Stuckey said he then set the fire, believing his grandmother was dead. He admitted setting the fire to cover up the attack. He said he then staged the house to look like a burglary, taking his grandmother's jewelry and other things and hiding them in the woods off Charley Road, which someone later found. Law enforcement found no evidence that Stuckey's boyfriend had participated in the crimes and he later testified for the State.

In December 2010, following a jury trial, Stuckey was convicted of murder and arson and sentenced to life plus 20 years in prison. He then appealed to the state Supreme Court, arguing that he received "ineffective assistance" from his trial attorney in violation of his constitutional rights.

Today's opinion points out that to prevail on a claim of "ineffective assistance of counsel," Stuckey had the burden of proving both that the performance of his trial attorney was professionally deficient and that had the attorney not performed deficiently, there was a reasonable probability the trial would have ended differently. Stuckey argued that his trial attorney provided ineffective assistance in four ways, including by her failure to object to the admissibility of a 400-page printout of his MySpace account, which was composed largely of sexually provocative photographs Stuckey had taken of himself. At a hearing on his motion asking for a new trial, the trial attorney explained that she did not object to the photos because they fit in with her strategy of showing that Stuckey was looking for someone to care for and accept him, so he became involved with older men, such as the boyfriend on whom he blamed the murder.

"Considering all of the circumstances of this difficult case, we cannot say that trial counsel's strategic decision was unreasonable, so Appellant has not shown deficient performance," the opinion says. "Moreover, even assuming that an objection to some of the MySpace printout would have succeeded, Appellant has not shown a reasonable probability that its admission affected the result of his trial." The evidence that Stuckey had committed the crimes "was overwhelming, including his admission that he set the fire, which the medical evidence showed was one of the causes of the victim's death." Like all his other claims of ineffective assistance of counsel, this one lacks merit, the opinion says.

Attorney for Appellant (Stuckey): Christy Draper

Attorneys for Appellee (State): Brian Fortner, District Attorney, Emily Richardson, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

LEWIS V. THE STATE (S17A1143)

The Supreme Court of Georgia has upheld the murder conviction and life-without-parole prison sentence given to a man convicted in **Houston County** of hiring a hitman to kill his former business partner. The hitman subsequently killed the wrong man.

In this high-profile case, Devasko Lewis argued the evidence was insufficient to prove him guilty of the botched murder-for-hire scheme that resulted in the shooting death of Kerry Glenn. But in today's unanimous opinion, written by **Justice Robert Benham**, "we conclude the evidence was sufficient to authorize the jury verdicts under the standard set forth in *Jackson v. Virginia*," a 1979 U.S. Supreme Court decision.

According to the facts of the case, Lewis owned a trucking company in Cordele, GA, that employed Corey Daniels as a truck driver. According to state prosecutors, Lewis went to Daniels and said he needed to put everything – the company, its truck titles, and bank accounts – in Daniels’ name. Daniels later learned that several years earlier, one of Lewis’s drivers had been in an accident that killed at least six correctional officers. After transferring the business into Daniels’ name, Lewis remained a silent partner, maintaining control over the drivers, paperwork and payroll. Lewis and Daniels were eventually indicted in federal court for issues related to the business. After Daniels’ attorney told him that federal authorities really wanted Lewis, Daniels agreed to testify against him in the federal case. When Lewis learned that Daniels planned to testify against him, he approached a man, Tony Taylor, about finding someone to kill Daniels. Taylor introduced him to his cousin, Jamarcus Clark. Lewis met with Taylor and Clark and told them a man named Corey Daniels owed him money, and that he wanted Clark to get the money and truck titles which were at Daniels’ mother’s house. Lewis told Clark that if Daniels’ mother would not allow him into her house, he should “take her out.” Clark later testified that on Jan. 9, 2014, Lewis drove him to Houston County, gave him \$400 and paid for his hotel room. Later that evening, Clark walked to the home of Ernestine McGhee, Daniels’ mother, on Jewel Drive and when she would not let him in the house, he fired shots into the living room and kitchen. McGhee escaped injury. The next day, Lewis told Clark there was more work that needed to be done, and he gave Clark \$1,000 to kill Daniels. Lewis drove Clark to Daniels’ home to show him where he lived and instructed Clark to approach Daniels by saying he was interested in buying his racecar. Lewis promised to pay Clark an additional \$4,000 once the hit was completed.

On Jan. 14, 2014, Lewis met Clark in Tifton, GA and took him to a shop where he gave Clark a truck to drive back to Houston County and kill Daniels. Clark drove the truck to Daniels’ house and pulled into his yard. Unknown to Clark, Daniels was not at home, but his nephew, Kerry Glenn, who lived with Daniels, came outside to find out what Clark wanted. Clark, who had never met either Daniels or Glenn, assumed that Glenn was Daniels. Clark asked him about buying the racecar, and Glenn took him to the back of the house to show Clark the car. Glenn was telling him about the motor when Clark, who was behind Glenn, aimed the gun at Glenn’s head and fired one shot, killing him. The next day, Clark met with Lewis who told him he had killed the wrong man. Clark later identified Lewis in a photographic lineup and at trial as the man who had planned both incidents.

In March 2014, a Houston County grand jury indicted Devasko Lewis and Jamarcus Clark for malice murder, felony murder, and aggravated battery related to the shooting death of Kerry Glenn, and for conspiracy to commit the murder of Corey Daniels and Ernestine McGhee. Following trial in April 2015, Lewis was convicted on all counts except for conspiracy to murder McGhee. He was sentenced to life without parole plus 10 years. Lewis then appealed to the state Supreme Court.

In addition to challenging the evidence as insufficient to convict him of the charges against him, Lewis argues he should have been granted a new trial because the main witness against him, his co-defendant and hitman Clark, later recanted his testimony. Clark wrote in a letter that he had testified against Lewis at trial because the district attorney had told him he would “go easy” on him if he told them about Lewis.

“Generally, a recantation of a witness’ trial testimony is merely impeaching of the trial testimony and does not establish a convicted defendant’s right to a new trial, even if the witness

states under oath that his prior trial testimony was false,” today’s opinion says. However, under Georgia Code § 17-1-4, an exception to that rule “is created when a trial witness is convicted of perjury with respect to his trial testimony.” The only other exception to the rule that prohibits setting aside a verdict based on trial testimony is where “there is no doubt” that the testimony of the State’s witness is “purest fabrication.” Although Lewis claims that Clark’s letter demonstrates that his trial testimony had been the “purest fabrication,” the high court disagrees. “Here, even if Clark had verified the contents of the letter under oath (which he did not), the evidence would consist only of the witness’ recantation that would merely serve to impeach his previous sworn testimony, and not independent evidence that illustrates the impossibility of the facts to which the witness previously testified,” the opinion says.

Lewis argues that if this Court concludes, as it did, that he is not entitled to a new trial, it should find that the current Georgia standard for requiring a perjury conviction to grant a new trial is unconstitutional because it violates the due process and equal protection clauses of the U.S. and state constitutions.

“This statutory requirement of a perjury conviction has been challenged before,” the opinion says. In 1949, in *Burke v. State*, the Georgia Supreme Court rejected the same constitutional challenges Lewis now asserts. In that case, the state Supreme Court concluded that § 17-1-4 is actually consistent with U.S. Supreme Court decisions that have found due process is denied when a conviction is procured by perjured testimony. “The statute requires a verdict obtained by perjured testimony to be set aside. This Court noted, however, that when the only evidence of perjury is that a trial witness later gives testimony contrary to that given at trial, the trial court ‘ought not to be called upon to say whether or not one of such statements is enough reliable evidence to authorize disbelief of the other.’”

“Again, we reject the assertion that the provisions of § 17-1-4 violate a convicted criminal’s rights to due process and equal protection of the law.”

Finally, Lewis argues that allowing a judge to impose the sentence of life without parole, without input from the jury as required before sentencing someone to death, means that anyone convicted of murder can have his sentence enhanced above the statutory minimum of life with the possibility of parole without a jury’s finding that an aggravating circumstance exists.

“In this case, sentencing appellant to life without parole did not increase the mandatory minimum sentence for the jury’s guilty verdict,” the opinion says. “The sentencing statute simply authorizes a range of sentences for the trial judge to consider upon conviction of murder if the death penalty is not sought and imposed by the jury.”

Attorneys for Appellant (Lewis): Laura Hogue, Susan Raymond

Attorneys for Appellee (State): George Hartwig III, District Attorney, Daniel Bibler, Dep. Chief Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

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

- * Marcus Battle (Fulton Co.) *
- * Jacobey Carter (Fulton Co.) *
- * Delroy T. Booth (DeKalb Co.)

BATTLE V. THE STATE (S17A0714)
CARTER V. THE STATE (S17A1301)
BOOTH V. THE STATE (S17A0705)
 (The Supreme Court has upheld Booth’s convictions for the malice murder, aggravated sexual battery, and other crimes against Shantle Vason, but it has thrown out the two counts of felony murder. Felony murder does not “merge” into malice murder but must be vacated by law.)

- * Brian Joseph Brewner (Gwinnett Co.)
- * Marshae D. Brooks (Gwinnett Co.)

BREWNER V. THE STATE (S17A1103)
BROOKS V. THE STATE (S17A1065)
 (Although the Supreme Court has upheld Brooks’s murder conviction and life prison sentence, it has thrown out the trial court’s order denying his motion to withdraw his guilty plea on procedural grounds and is sending the case back to the trial court to fix the sentence. In this case, the trial court should have dismissed, rather than denied the motion.)

- * Jessica Lee Brown (Bleckley Co.)
- * Jordan Michael Coleman (Newton Co.)
- * Horace Coleman (Douglas Co.) **
- * Quantez Mallory (Douglas Co.) **
- * Desean Lamar Graham (DeKalb Co.)
- * Valentino Jackson (Fulton Co.)
- * Curtis Todd Kuhn (Polk Co.)
- * Anthony Bernard Morris (Chatham Co.)
- * Marcus Payne (Fulton Co.)
- * Michael Todd Rice (Bibb Co.)
- * Joseph Scott Williams (Hall Co.)
- * Dontavious Wilson (Dougherty Co.)

BROWN V. THE STATE (S17A0826)
COLEMAN V. THE STATE (S17A1129)
COLEMAN V. THE STATE (S17A0818)
MALLORY V. THE STATE (S17A0819)
GRAHAM V. THE STATE (S17A0702)
JACKSON V. THE STATE (S17A1266)
KUHN V. THE STATE (S17A0919)
MORRIS V. THE STATE (S17A0747)
PAYNE V. THE STATE (S17A0886)
RICE V. THE STATE (S17A0982)
WILLIAMS V. THE STATE (S17A0783)
WILSON V. THE STATE (S17A0708)

- * Battle and Carter were co-defendants.
- ** Coleman and Mallory were co-defendants.

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

- * Gerald W. Fudge **IN THE MATTER OF: GERALD W. FUDGE (S17Y1653)**

The Court has ordered the **public reprimand and suspension (until the reprimand is administered)** of attorney:

* Michael Bernard King **IN THE MATTER OF: MICHAEL BERNARD KING**
(S17Y1470)

The Court has dismissed the State Bar's recommendation of a **public reprimand** as "reciprocal discipline" for attorney:

* James Hugh Potts, II **IN THE MATTER OF: JAMES HUGH POTTS, II** (S17Y0883)