



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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UNDISCLOSED LLC V. THE STATE (S17A1061)

The Supreme Court of Georgia has upheld a **Floyd County** judge's ruling denying the request of the makers of a podcast series to copy a court reporter's audio recordings made during a murder trial.

Undisclosed, the producer of the podcast about a Georgia murder, argued that under the Georgia Supreme Court's 1992 ruling in *Green v. Drinnon*, a court reporter's audio recordings are "court records" under Rule 21 of the Uniform Superior Court Rules and that Rule 21 provides the right to copy court records.

In today's decision, written by **Justice Nels S.D. Peterson**, the high court agrees that Rule 21 grants the right to copy "court records." However, under the common law, court records "include only those materials *filed* with the court, which the recording in question was not."

BACKGROUND: In 2001, Joseph "Joey" Watkins was convicted in Rome, GA of murder, stalking and other crimes for his role in shooting and killing Isaac Dawkins on Jan. 11, 2000 near Georgia Highlands College. Watkins was sentenced to life plus five years in prison. In 2003, the Supreme Court of Georgia upheld Watkins' conviction and sentence.

Undisclosed LLC is a Delaware corporation that produces the podcast, "Undisclosed." Since its debut in 2015, the company claims it has been listened to more than 120 million times. Season One of Undisclosed focused on the case of Adnan Syed, picking up where the hit podcast, "Serial" that ran on National Public Radio, left off. Season Two of Undisclosed, which debuted in July 2016, focused on Watkins' case. Undisclosed filed an open records request asking to copy the court's audio recordings of two pretrial hearings and of Watkins' 2001 trial. In response, Floyd County Superior Court Judge William Sparks ordered Undisclosed to file a

motion requesting access to the recordings, which its lawyers did. Georgia's Uniform Superior Court Rule 21 states that, "All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth." On Oct. 28, 2016 the judge granted Undisclosed the right to listen and inspect the tapes but denied its request to copy them. The judge cited the Georgia Supreme Court's 1992 ruling in *Green v. Drinnon* which stated that an "official court reporter's tape of a judge's remarks in open court is a court record" and that "the tape or its transcript must be made available for public inspection." But the trial judge wrote that nothing in *Green* entitled Undisclosed to the court reporters' back-up recordings and that Rule 21 did not confer the right to copy. Undisclosed appealed to the state Supreme Court, which agreed to review the case to determine whether a motion filed by Undisclosed, which was not a party in Watkins' criminal case, was the proper procedural way to get access to the recordings. The high court also wanted to hear arguments about whether the right to inspect includes the right to copy.

Regarding the first issue, the State argued in the appeal that a Rule 21 motion was not the proper vehicle for a non-party to access court records, and that Undisclosed should have instead sought a "writ of mandamus" to compel the government to do its duty and allow the copying of the records. Undisclosed argued that its Rule 21 motion was the proper vehicle. "Undisclosed is right," today's 32-page opinion says.

Regarding the second issue the high court wished to address, "we conclude that the trial court erred: Rule 21 does include a right to copy court records," the opinion says. "We nevertheless affirm the trial court's order because *Green*'s limited holding does not apply here, and a review of the common law shows that 'court records' within the historic right include only those materials filed with the court, which the recording in question was not."

"By the time Rule 21 was adopted in 1985, the General Assembly had statutorily mandated the contents of the formal record of the court," the opinion says. In 1965, the General Assembly enacted the Appellate Practice Act, which prescribed the matters and documents that are included in a court record, such as all motions, objections and rulings. In today's opinion, "we construe Rule 21's use of the phrase 'court record' consistent with the meaning of court record supplied by the Act." However, "both the common law and the Act reflect the same basic principle: for something to be a court record, it must be filed with the court," today's opinion says. Because the court reporter's audio recordings in this case are not filed with the court, "they are not court records under Rule 21." This conclusion, the opinion states, "is in accord with other courts that have considered the issue."

Attorneys for Appellant (Undisclosed): Michael Caplan, Sarah Brewerton-Palmer

Attorneys for Appellee (State): Leigh Patterson, District Attorney, John McClellan, Jr., Asst. D.A.

THE STATE V. JEFFERSON ET AL. (S17A1085)

Under an opinion today, the Supreme Court of Georgia has ruled as unconstitutional a statute that is designed to help the State prove the existence of criminal gang activity by allowing in evidence of the prior convictions of defendants who are not even involved in the case.

Presiding Justice Harold Melton writes for the court that, "we conclude that the trial court correctly determined that Georgia Code § 16-15-9 is unconstitutional on its face to the

extent that it authorizes the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang.”

The ruling stems from the State’s appeal of a **DeKalb County** pre-trial decision stating that when an attempted murder case goes to trial against a number of alleged gang members, the former convictions of other alleged gang members cannot be admitted as evidence.

The State hopes to prove at trial that Larry Travis was a member of the “GKB set” of the Bloods street gang. In the spring of 2015, Travis became a target of members of the rival gang, “2100,” which the State contends is also known as the “Black Mob” or the “Hoe Haters.” (The defendants contest that all three gangs are a single entity.) The alleged members of the 2100 gang included **Brenton Jefferson** (also known as “Lil B”), his brother Santez Jefferson (a.k.a. “Tez”), Demarcus Cawthorne (a.k.a. “Westside”), Jamal Arnold (a.k.a. “Lil C”), and Lee Davis (a.k.a. “Unc”). According to the State, discord between the two groups had simmered for a while and seemed to focus on disputes over territory for selling drugs. Travis was friendly with rival gang member Arnold, and when Arnold called him to arrange a meeting at an abandoned apartment where Travis often sold drugs, Travis agreed. On April 5, 2015, Travis went to the apartment complex but when he arrived, his car was immediately surrounded by rival gang members armed with AK-47s. Among them were the Jefferson brothers, Santez, Cawthorne and another man, Cheyenne Phillips (a.k.a. “Big Boy”). According to prosecutors, they dragged Travis into an abandoned apartment, stripped off his clothes, and held him at gunpoint. Davis lived in the complex and soon joined the other 2100 gang members in the attack. After Santez Jefferson retrieved a knife from a nearby apartment, the men took turns trying to saw off Travis’ fingers until three were almost severed. Brenton Jefferson then twisted the appendages until they separated from Travis’ hand. While the others held Travis down, Davis then attempted to cut off Travis’ right leg. After multiple attempts resulting in bone-deep wounds to his leg, the men concluded that the massively bleeding Travis was either dead or rapidly dying. They wrapped him in a carpet and left him to die before leaving the scene.

But Travis did not die. Bleeding heavily, he managed to free himself from the rolled-up carpet and crawled across the parking lot to get help. Police were called, and Travis immediately identified Phillips and the 2100 gang members as his attackers. On June 4, 2015, the Jefferson brothers and the others were indicted for a number of crimes including attempted murder, aggravated battery, aggravated assault, kidnapping, and violations of the Street Gang and Prevention Act.

In its efforts to build a case that the defendants were part of a gang, the State sought under Georgia Code § 16-15-9 to introduce four certified copies of convictions related to various gang members, including Cawthorne and some third parties who were not involved in this case. Georgia Code § 16-15-9 states: “For the purpose of proving the existence of a criminal street gang and criminal gang activity,” the convictions of any offenses listed in Code Section 16-15-3 as criminal gang activity “by any member or associate of a criminal street gang shall be admissible in any trial or proceeding.” In August and September 2016, the defendants filed a motion asking the court to declare the statute unconstitutional and to bar the introduction of third party convictions. Following a hearing, the trial court entered an order declaring § 16-15-9 unconstitutional, finding that the admission of the third party convictions and the prior conviction of Cawthorne to prove the defendants’ connection to gang activity would violate their Sixth Amendment rights under the U.S. Constitution to confront the witnesses against them.

Therefore, neither Cawthorne’s prior conviction nor the other convictions would be admissible at trial. The State then appealed to the Georgia Supreme Court.

In today’s unanimous opinion, the high court’s analysis begins with the Sixth Amendment to the U.S. Constitution, which states that, “In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him.” Since its 1899 ruling in *Kirby v. United States*, the U.S. Supreme Court “has recognized for over 100 years that this right of confrontation contained in the Sixth Amendment is ‘one of the fundamental guarantees of life and liberty,’” the opinion says. “And, in this connection, the high court has established through its ruling in *Kirby* that a criminal defendant is unconstitutionally deprived of his fundamental right of confrontation when third party convictions are used as a substitute for testimony against that defendant to prove an element of a criminal charge against him.”

Here, Georgia Code § 16-15-9 “does exactly what the United States Supreme Court declared was constitutionally forbidden in *Kirby*,” the opinion says. “By its plain language, the statute allows for third party convictions of any alleged street gang members who have committed any of the enumerated offenses in Georgia Code § 16-15-3 (1) to be used as proof against other individuals in any proceeding in which those other individuals are charged with the crime of participating in criminal gang activity.”

“Because § 16-15-9 on its face deprives criminal defendants of their fundamental right of confrontation in violation of the Sixth Amendment to the United States Constitution, the statute cannot pass constitutional muster and must be declared void to the extent that it authorizes the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang,” today’s opinion concludes.

Attorneys for Appellant (State): Sherry Boston, District Attorney, Anna Cross, Dep. Chief D.A., C. Lance Cross, Dep. Chief D.A., Dwayne Asst. D.A.

Attorneys for Appellee (Jefferson et al.): Bryan Henderson et al.

CITY OF MARIETTA V. SUMMEROUR (S17G0057)

Under an opinion today by the Supreme Court of Georgia, the high court has ruled in favor of a man whose property had been condemned by the City of Marietta.

With this decision, the Supreme Court has upheld a Georgia Court of Appeals ruling that threw out a **Cobb County** court’s order condemning the commercial property owned by **Ray D. Summerour**.

“Because the City failed to comply with [Georgia Code] § 22-1-9 (3), and because there is no evidence in the record that Summerour acquiesced in or waived strict compliance with the statute, the City acted outside its authority by condemning Summerour’s property, and the City’s condemnation petition must be dismissed,” **Justice Keith Blackwell** writes for a unanimous court.

In 2009, the voters of the City of Marietta approved a referendum for a \$25 million parks bond to improve and expand the Elizabeth Porter Park located at the site of an existing recreation center near the intersection of Allgood Road and North Marietta Parkway. At the time of the referendum, Summerour owned a small grocery store on Allgood Road called “Brenda’s Grocery Store.” Located in the Baptist Town district of Marietta, an historic black neighborhood, the store is adjacent to the planned expansion of the Elizabeth Porter Recreation Center’s eastern border, and the City identified his property as one of nine it needed to acquire for the expansion.

The City contacted Summerour in June 2010, via letter, informing him of its interest in purchasing his property, and letting him know it had hired an appraiser to determine its value. Subsequently the City sent Summerour a letter informing him the appraiser had valued his property at \$85,000 and it offered to purchase it for that price. Summerour did not respond, and in October, the City sent another letter making the same offer. Again, Summerour did not respond.

In 2013, the City again sent a letter to Summerour expressing its interest in purchasing his property and stating that its current appraisal was \$95,000 and that the small grocery on the property had an appraisal value of \$46,700. The City offered to purchase the property for \$141,700. In August 2013, Summerour sent a letter to the City saying the offer was lower than he expected and requesting a summary of the appraisal. He added he would be hiring his own appraiser and had learned by attending City Council meetings that the City was considering acquiring his property through eminent domain. Initially, the City did not respond to Summerour's correspondence, and on Dec. 4, 2013, Summerour sent the City another letter offering to sell the property for \$375,000. The City responded in a Dec. 10, 2013 letter in which it increased its offer to \$152,000, stating that unless Summerour provided his own certified appraisal, the current offer likely would be its highest. It asked Summerour to respond by Dec. 18, 2013. On Dec. 17, Summerour hand delivered a letter to the City, rejecting its offer but requesting a meeting so the parties could discuss the differences in their appraisals.

During the next several months, Summerour hired an attorney and an appraiser and requested that the City postpone any formal action until his appraiser determined the property's value. The City complied, and informal discussions continued, with the City stressing it did not believe that formal settlement meetings would be productive unless Summerour first provided the appraisal value of his property from his licensed appraiser. On May 8, 2014, Summerour's attorney wrote the City complaining that the City had never provided copies of its appraisals, or summaries of them, as required by Georgia Code § 22-1-9 (3). Soon after, the City delivered a summary of its appraiser's report to Summerour. In May 2014, the City sent a full appraisal report, although it was dated July 17, 2013 (almost 10 months prior to its production). The City eventually offered to purchase the property for \$160,000. Summerour rejected the offer, negotiations broke down, and in June 2014, the City wrote a letter to Summerour informing him it was moving forward to acquire his property through eminent domain. In October 2014, the City filed a condemnation petition to acquire Summerour's property in Cobb County Superior Court. Following a hearing, the court-appointed "special master" (a lawyer appointed by the judge to assist the judge in a particular case) condemned the property and awarded Summerour \$225,000. After both parties appealed, the trial court held its own hearing and adopted the special master's findings.

Summerour then appealed to the Court of Appeals, which ruled that the City had failed to provide a summary of the basis for its offer when negotiations first began, in violation of § 22-1-9 (3). As a result, the Court of Appeals threw out the condemnation order and sent the case back to the trial court to determine whether the City's failure to comply with Section 22-1-9 amounted to bad faith. In a pre-trial appeal, the City of Marietta appealed the ruling to the Georgia Supreme Court, which agreed to review the case to determine whether the appellate court misconstrued the statute by mandating pre-condemnation procedures.

In today's unanimous opinion, "we now hold that compliance with Section 22-1-9 is an essential prerequisite to the filing of a petition to condemn, that the City failed in this case to fulfill that prerequisite, and that its petition to condemn, therefore, must be dismissed, irrespective of bad faith. We accordingly affirm the judgment of the Court of Appeals to the extent that it set aside the order of condemnation, but we reverse its direction to the superior court to inquire into bad faith."

The City argued in its appeal that § 22-1-9 sets forth merely suggested guidelines for condemnations, which are not mandatory. Here, however, the high court agrees with Summerour that the provisions of § 22-1-9 are mandatory "except to the extent that compliance with those provisions is impracticable."

"The text, structure, and history of the statute as a whole indicate that this statutory scheme is to protect property owners from abuse of the power of eminent domain at all stages of the condemnation process," the opinion says. "If Section 22-1-9 were entirely optional, as the City urges, the protective function of the Act as a whole would be impaired significantly."

Section 22-1-9 (3) specifically states that, "Before the initiation of negotiations for fee simple interest for real property, the condemning authority shall establish an amount which it believes to be just compensation and shall make a prompt offer to acquire the property for the full amount so established... The condemning authority shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for the amount it established as just compensation."

"We agree with the Court of Appeals that the City violated this provision because it failed to disclose the appraisal summary to Summerour in a timely manner," today's opinion says. "There is no need for the trial court to reconsider the question of bad faith, and to the extent that the Court of Appeals directed the trial court to do so on remand, its judgment is reversed."

Attorneys for Appellants (City): Douglas Haynie, Daniel White, Sarah Hegener

Attorney for Appellee (Summerour): Donald Evans, Jr.

THE STATE V. CASH ET AL. (S17A1059)

The Supreme Court of Georgia has ruled in favor of the State and reversed a **Paulding County** judge's order acquitting a mother and daughter of murder.

With today's unanimous decision, written by **Chief Justice P. Harris Hines**, the high court has ruled that the State may retry **Elgerie Mary Cash** and her daughter Jennifer Michelle Weathington for the fatal shooting of Lennis Jones, rejecting their argument that a retrial would constitute "double jeopardy" in violation of their constitutional rights. This is the second time this case has been before the state's highest court.

According to briefs filed in the case, on Memorial Day weekend, 2011, Lennis Donovan "Donny" Jones was at the home of Elgerie Mary Cash in Dallas, mowing the grass. Jones, 44, was friends with Cash, 45, and according to prosecutors, had recently become romantically involved with Cash's daughter, 20-year-old Jennifer Weathington. The afternoon of May 30, 2011, neighbors heard an outcry from the house and said Cash ran out of the house shouting that "Donny" had been shot. Deputies from the Paulding County Sheriff's Office arrived within minutes and found Cash standing on the front porch crying, screaming for help, and saying, "My daughter's boyfriend just shot himself." They found Jones in the upstairs bedroom lying on the floor, with a single gunshot wound to the head. Weathington was crouched by Jones and holding

a towel to his head, crying and begging for help, and telling Jones to “hang on.” Jones, who was still alive at that point, was transported to Kennestone Hospital where he died later that day.

Cash told officers that she and Jones had been examining her new gun when it went off. Taking the gun from her, Jones had pulled the slide several times to empty out the live rounds and then noted that it was no longer loaded. Cash said she had disputed this, so Jones pointed the gun at his head and pulled the trigger, at which point the gun fired. Officers later testified that at that point, they did not suspect foul play. Jones’ body was transferred to the Georgia Bureau of Investigation where medical examiner Dr. Jonathan Eisenstat conducted an autopsy. He found no stippling or powder tattooing at the site of Jones’ wound and concluded the fatal shot was fired from at least 18 inches from the point of entry and it was not possible the wound was self-inflicted. According to prosecutors, although Cash told officers that Jones had held the pistol “against his right temple,” the bullet had entered behind and below his right ear and exited at the top left of his forehead. Cash later related a different version of events to a detective, saying that she had accidentally fired a shot into the wall before Jones asked for the weapon. On June 6, 2011, investigators used a search warrant to go through Cash’s home where they found Jones’ baseball cap in the laundry room, which had Jones’ blood on it. According to the women’s attorneys, Jones had been wearing the hat at the time of his death, which could explain the finding that the wound appeared to have been inflicted from at least 18 inches away. According to the medical examiner, there was no possibility that the hat was on Jones’ head when he sustained the fatal head wound because there was no biological matter on the hat’s inner brim.

More than six months later, in December 2011, Cash and her daughter were arrested and charged with Jones’ murder. In October 2013, a jury convicted both of them of malice murder, felony murder, two counts of aggravated assault and possession of a firearm during the commission of a felony. Each was sentenced to life in prison plus five years on the gun charge. They filed a motion requesting a new trial, and a hearing was set for May 12, 2014.

Following a two-day hearing, the trial judge granted the women a new trial, finding in the court’s discretion that the jury’s verdict went against the weight of the evidence and that the women’s attorneys had rendered ineffective assistance of counsel based on a number of deficiencies, including their failure to secure expert testimony at trial.

The State appealed to the Georgia Supreme Court, arguing the trial judge erred in granting a new trial.

In November 2015, this Court ruled against the State and upheld the judge’s order granting Cash and her daughter a new trial.

In January and February 2016, attorneys for Weathington and Cash each filed a special “Double Jeopardy Plea in Bar,” seeking the dismissal of their case on the grounds that putting the women again on trial would subject them to “double jeopardy.” Under the U.S. Constitution, a defendant may not be tried, convicted and sentenced for the same crime twice. Following a hearing, another trial judge determined the evidence against Cash and Weathington was insufficient and on that basis, entered judgments of acquittal for both women on all charges. The State again appealed to the state Supreme Court, arguing that the trial court erred by dismissing the charges against the women based on insufficient evidence.

“Here, there was ample evidence, forensic and otherwise, to support the determination that the shooting was a homicide,” today’s opinion says. “And, contrary to findings by the superior court in making the ruling at issue, there was evidence from which the factfinder could

conclude that Cash rather than Weathington likely fired the fatal shot, and that the mother and daughter cooperated, even conspired, with each other to accomplish the killing and then portray the shooting as self-inflicted, and that each intentionally aided and abetted the other in the commission of the crimes.”

“Here, the evidence that Weathington accompanied her mother to purchase the murder weapon well prior to the shooting, that Weathington actively lied to police about the timing of its acquisition, and that she not only affirmed her mother’s varying versions of events, but immediately following the shooting began to promote to third parties their joint stories that Jones shot himself, support the finding that she aided and abetted the killing,” the opinion says.

“Even if the evidence did not conclusively establish which of the women actually shot Jones, there was evidence of a common criminal intent, including the women’s presence, companionship, and conduct before and immediately after the fatal shooting. Consequently, the evidence was sufficient to enable a rational trier of fact to find both Cash and Weathington guilty beyond a reasonable doubt of the crimes of which they were convicted.”

As a result, today’s opinion concludes, “the judgment sustaining the ‘Double Jeopardy Plea in Bar’ on the basis of insufficient evidence in the first trial is reversed, and the case is remanded to the superior court for proceedings consistent with this opinion.”

Attorney for Appellant (State): Donald Donovan, District Attorney

Attorneys for Appellees (Cash): Aaron Henrickson, Andrew Fleischman

JONES V. THE STATE (S17A1298)

The Supreme Court of Georgia has unanimously upheld the murder conviction and life prison sentence given to a man in **Clayton County** for beating his 1-year-old daughter to death.

In today’s opinion, **Justice Robert Benham** writes for a unanimous court that “the evidence supported the crimes for which appellant was convicted.”

According to the evidence at trial, Jania Parker-Jones was still an infant when her father, **Marlon Tyjuawnn Jones**, won custody of her. Jones had three other children: a 10-year-old daughter, a 2-year-old son, and a 15-month old daughter. Initially, Jones seemed happy to have won custody of Jania, but in time, his demeanor changed toward the 12-month-old, according to witnesses. The three younger children went to a child development center, and Jania’s teacher and another staff member there later testified that although Jones seemed excited to see his other children when he picked them all up, he never greeted Jania. Jania’s teacher noticed that the baby, who was normally “happy” and “full of life” at the center, would fall silent when Jones arrived to get her. Increasingly, the staff at the child development center became concerned about Jania’s care at home. The teacher documented bruising on the little girl’s left cheek and right leg. Three weeks later, she documented a “black and purple bruise” on Jania’s left ear. However, no one from the daycare center ever contacted authorities regarding those injuries.

Although the staff had enjoyed a good relationship with Jones in the past, everything changed once Jania began attending, according to their testimony. On one occasion, when the director called Jones to say Jania was sick, he cursed her and hung up. Another time, the director called to tell him that the baby had a severe rash near her vagina that was open and bleeding. When she asked Jones for a doctor’s statement assuring that the baby had been treated, he went into a rage, cursing and yelling at her. The center director eventually refunded Jones’ childcare payments for the week and told him to find another daycare center.

On March 10, 2012, Jones' older daughter was at home with her father, Jania and one of the toddlers when she heard a "bump" coming from Jones' room, followed by the sound of Jania crying. She later testified it sounded as if Jania had fallen onto the floor. The older girl went to sleep, but in the early morning hours of March 11, Jones woke the girl up, gathered all the children, and took them to the home of his girlfriend, Marshana Saddler, the mother of two of Jones' children. Before they left, the older daughter checked on her baby sister who was in the playpen. She said Jania's eyes were closed and she wasn't breathing. After Jones took everyone to Saddler's house, Saddler drove them to the Southern Regional Medical Center.

At the hospital, Jones told the registration clerk that Jania had fallen from a dressing table to the floor. At the same time, he said he had been holding the baby in his arms when she fell. The emergency nurse room nurse observed that Jania had no pulse and was not breathing. "Bright red blood" was coming from the baby's mouth and nose. She had a large bruise behind her right ear, as well as a "large hematoma," or swelled knot, on the top of her head. Although medical staff tried to save the baby, rigor mortis had set in and the baby was declared dead. The medical examiner testified that the baby died from blunt force trauma caused by at least four impacts to her head. Based on her analysis of the bruised tissue on Jania's head, the medical examiner said she estimated that the baby had remained alive for about three hours after she was injured. At trial, Jones testified that he had been carrying Jania when he tripped, and as a result, the baby hit her head against the wall then fell from his arms onto the floor. The medical examiner testified that Jania's injuries were inconsistent with a household fall.

Following trial in October 2013, a jury convicted Jones of felony murder and cruelty to children in the first and second degrees. The judge sentenced him to life in prison plus two concurrent terms of 20 years. Jones then appealed to the state Supreme Court, arguing the evidence was insufficient to convict him, his trial attorney was incompetent and ineffective in violation of his constitutional rights, and the trial court abused its discretion by failing to grant a mistrial.

In today's opinion, the high court disagrees and finds no merit to any of his arguments. "A rational jury was authorized to reject appellant's [i.e. Jones's] defense that the victim's injuries were accidental and authorized to find that appellant maliciously caused cruel and excessive physical pain to the victim and unreasonably failed to obtain medical treatment for the victim after the injuries occurred, thereby proximately causing her death," the opinion says. Jones did not meet his burden in proving he received "ineffective assistance of counsel," and the "trial court did not abuse its discretion when it declined to call a mistrial." However, due to a sentencing error, today's opinion has thrown out one of the child cruelty counts, which should have merged into the other child cruelty count for sentencing purposes. Jones nevertheless is due to remain in prison for life.

Attorney for Appellant (Jones): Darrell Reynolds

Attorneys for Appellee (State): Tracy Lawson, District Attorney, Kathryn Powers, Dep. Chief Asst. D.A., Elizabeth Baker, Dep. Chief Asst. D.A.

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

- * Ahmad Edward Brown (Gwinnett Co.) **BROWN V. THE STATE (S17A1141)**
 (Although the Supreme Court has upheld Brown’s murder conviction sentence to life without parole, due to a sentencing error, it is sending the case back with direction that the trial court also sentence Brown on a count for selling marijuana.)
- * Kyle Devonte Timmons (Floyd Co.) **TIMMONS V. THE STATE (S17A1149)**
 (The high court has affirmed Timmons’ murder conviction and life prison sentence, but it has thrown out his sentences for aggravated assault and aggravated battery as those felonies merged into the felony murder conviction for sentencing purposes.)
- * Brodrick Williams (Gwinnett Co.) **WILLIAMS V. THE STATE (S17A1036)**
 (Although the Supreme Court has upheld Williams’ murder conviction and life prison sentence, it has reversed his armed robbery conviction and a second concurrent life sentence, finding the evidence was not sufficient to support his conviction for armed robbery.)
- * Temon Jarmell Williams (Clarke Co.) **WILLIAMS V. THE STATE (S17A1216)**
 (The Supreme Court has upheld Williams’ murder conviction and prison sentence of life without parole, but it has thrown out his additional sentences for aggravated assault and possession of a knife during the commission of a crime. Those crimes should have been merged into the malice murder conviction for sentencing purposes.)