



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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MEADOWS V. THE STATE (S18A0314)

Under an opinion today by the Georgia Supreme Court, a young man whose first trial ended in a mistrial may not be retried for murder on the ground it would violate his constitutional right against double jeopardy.

According to the facts of the case, in February 2014, Damion Bernard Clayton was shot and killed in a baseball park in Macon. A **Bibb County** grand jury indicted **Jedarius Treonta Meadows**, who was 17 at the time of the crime, and two co-defendants with murder, armed robbery and aggravated assault. Meadows and one of the co-defendants were also indicted for Violation of the Street Gang Terrorism and Prevention Act. Meadows' trial was severed from that of his co-defendants, who agreed to testify for the State. The trial began Sept. 8, 2015 when a jury was sworn and impaneled. The jury heard testimony from a number of witnesses Sept. 9 through 11, and the lawyers wrapped up with closing arguments the morning of Sept. 12. At about 1:30 that afternoon, the judge instructed the jury about the law affecting the case, and jurors then retired to the jury room to deliberate. Shortly after, jurors were given lunch. After lunch, one of the jurors asked to be replaced with an alternate because, she said, she was "not in her right mind." Following a brief conversation with the juror, the judge replaced her with an alternate. Then the jury sent out a note asking for equipment to view some video evidence. At some point, the jury took a break.

At about 4:20 p.m., after consulting with the prosecution and defense counsel, the judge brought in the jury to ask if they were making progress. The foreperson said, "We've got some individuals that are very strongly – they are not moving," and the judge said that several jurors had indicated "no" when asked if they were making progress. The judge sent the jury back to the

jury room and informed both the defense and the prosecution he would give the jury another 15-to-20 minutes, then would “either give them an *Allen* charge or declare this jury hung.” (An “*Allen* charge” is an instruction a judge gives to encourage jurors to keep deliberating.) The prosecutor said he did not believe an *Allen* charge would help, as he believed the jury was not going to reach a verdict. The defense attorney argued that there was potential for an *Allen* charge because progress was possible, given the short time the jury had been deliberating. Jurors had been deliberating for only three hours after a four-day trial. Soon after, the judge informed the attorneys that the bailiff had told him things had become heated in the jury room and that “at one point he thought he was going to have to go in there.” At about 4:40, the judge told the attorneys that, “It has been reported to me that their discussion in the jury room has become quite contentious and volatile.” The judge said that he felt the jurors “have served above and beyond the call on this,” that it was obvious they were not making any progress, and that he was going to send them home. The judge again summoned jurors to the courtroom and told them that, “based on the previous conversation with you, it doesn’t sound to me like you are really getting very far,” and he dismissed them over the defense attorney’s objection that three hours of deliberation was not unreasonable.

On Oct. 2, 2015, Meadows’ attorney filed a “Plea in Bar Based on Double Jeopardy,” arguing a retrial would violate Meadows’ constitutional right against double jeopardy. (Double jeopardy protects criminal defendants from being tried twice for the same crime.) In June 2017, following a hearing, the judge denied the plea and stated in the order that the mistrial had been necessary “in the interest of juror safety.” Meadows then appealed to the state Supreme Court.

“Having reviewed the record, we conclude that the trial court declared the mistrial without sufficient factual support and without considering less drastic alternatives to terminating the trial,” **Justice David E. Nahmias** writes in today’s unanimous decision. “Because there was no manifest necessity for a mistrial, we reverse the denial of the plea in bar.”

The protection against double jeopardy recognizes “the valued right of a criminally accused, once his jury has been sworn and impaneled and thus jeopardy has attached, to have his trial proceed to acquittal or conviction before that tribunal,” the opinion says, quoting the Georgia Supreme Court’s 1974 decision in *Jones v. State*. To avoid being barred from holding a second trial, “the court may declare a mistrial without a defendant’s consent or over his objection only when ‘taking all the circumstances into consideration, there is a manifest necessity for doing so,’ which means ‘a high degree of necessity.’”

“The trial court need not say ‘manifest necessity’ or articulate all of the findings supporting its declaration of a mistrial, but sufficient justification for the court’s ruling must be evident upon review of the record; when the record fails to reveal any circumstances that would clearly necessitate a mistrial or to demonstrate the court’s careful and deliberate consideration of the possible double jeopardy consequences, the court’s decision to terminate a trial cannot be sustained, and the Double Jeopardy Clause will bar a retrial.”

The trial judge put in his order denying Meadows’ plea that he granted the mistrial solely “in the interest of juror safety.”

“The first problem with that ruling is that any conclusion that the jurors were or felt unsafe is, at best, only tenuously supported by the record,” the opinion says. “Most significantly, the trial court did nothing to try to confirm the deputy’s reports with the jurors by asking if any of them felt the least bit unsafe during their deliberations.”

“The attenuated factual support for the court’s decision to terminate the trial is exacerbated by the court’s failure to consider alternatives to declaring the mistrial,” today’s opinion says. This Court “has repeatedly emphasized that, before concluding that manifest necessity for a mistrial exists, the trial court should ‘give careful, deliberate, and studious consideration to whether the circumstances demand a mistrial, with a keen eye toward other, less drastic, alternatives, calling for a recess if necessary and feasible to guard against hasty mistakes.” In this case, “There is no indication in the record that the trial court evaluated any alternative less drastic than a mistrial.” Yet, there were obvious alternatives, the opinion points out, including instructing the jurors to take a break and relax, sending them home for the day, admonishing them to keep their deliberations civil and respectful, and determining if a specific juror was responsible for the environment and removing or admonishing that juror.

“Contentious jury deliberations, without more, do not establish the manifest necessity required for a constitutionally permissible mistrial,” the opinion says. “For these reasons, the trial court abused its discretion in declaring a mistrial over Appellant’s [i.e. Meadows’] objection, and his plea in bar should have been granted.”

Furthermore, “particularly given the delay between the mistrial and this decision, he should be promptly ordered released from confinement upon the return of the remittitur from this Court,” the opinion says. (“Remittitur” is the term used by an appellate court for the official transfer of its ruling to the trial court and the return of jurisdiction from the appellate court to the lower court.)

Attorneys for Appellant (Meadows): Mark Barnes, James Davis

Attorneys for Appellee (State): K. David Cooke, Jr., District Attorney, Dorothy Hull, Asst. D.A.

NEW CINGULAR WIRELESS PCS, LLC ET AL. V. GEORGIA DEPARTMENT OF REVENUE ET AL. (S17G1256)

The Supreme Court of Georgia has ruled that a dealer seeking millions in tax refunds for its customers was not required to advance its own funds to the customers before applying for a refund on their behalf from the Georgia Department of Revenue.

Under today’s unanimous decision, written by **Presiding Justice Harold D. Melton**, the high court has reversed part of a Georgia Court of Appeals decision that upheld a **DeKalb County** court’s dismissal of a lawsuit brought by four cellular and wireless data providers who sought a refund for their customers, alleging the customers had been improperly taxed.

According to the facts of the case, **New Cingular Wireless PCS, LLC** and three other data providers – all doing business as Georgia AT&T Mobility – alleged that from 2005 to 2010, they sold wireless Internet access services, which were exempt from state sales tax under Georgia Code § 48-8-2. The statute says that for purposes of state sales and use tax, “telecommunications service” shall not include “Internet access service.” In November 2010, AT&T requested a refund from the **Georgia Department of Revenue** for sales tax AT&T claimed had been erroneously charged to its Georgia customers on the purchase of wireless Internet access service. Nearly five years later, in March 2015, the Department denied the request to refund almost \$6 million to Georgia customers.

On April 17, 2015, AT&T Mobility sued the Department of Revenue and Commissioner Lynnette T. Riley in her official capacity. In response, the Department filed a motion to dismiss

AT&T's action. It argued the complaint should be dismissed because: 1) AT&T did not reimburse the alleged illegally collected sales tax to customers before seeking a refund from the Department, in violation of Department Regulation 560-12-1-.25; 2) it lacked standing to file sales-tax-refund claims on behalf of customers for periods prior to May 5, 2009; and 3) the action was barred by Georgia class-action law. The trial court granted the Department's motion on all three grounds, and AT&T then appealed to the Court of Appeals. The Court of Appeals upheld the trial court's dismissal because AT&T had not proven that it had reimbursed the customers for the taxes before requesting the refund, in violation of Regulation 560-12-1-.25. Specifically, the regulation states that if taxes are illegally or erroneously collected, "the dealer may secure a refund as provided in Georgia Code Section 48-2-35, provided however, the dealer must affirmatively show that the tax so illegally or erroneously collected was paid by him and not paid by the consumer, or that such tax was collected from the consumer as tax and has since been refunded to the consumer." The Court of Appeals agreed that § 48-2-35 does not require that a dealer advance its own funds to customers before knowing if the Department of Revenue will grant a refund, but the appellate court found that the Department interprets the regulation to impose that requirement, and it would defer to the Department's interpretation. AT&T then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals correctly interpreted Regulation 560-12-1-.25 to require that a dealer seeking a sales tax refund must reimburse its customers before applying for a refund from the Department of Revenue.

In today's opinion, "we find that the answer to this question is 'no,' and we find that the Court of Appeals opinion must be vacated in part and reversed in part, and that the case must be remanded with direction."

Both the trial court and the Court of Appeals concluded that the Department's regulation requires a dealer to refund its customers all taxes that it contends were erroneously collected *prior to pursuing* a refund action. But such construction of the regulation is "unreasonable," the opinion says. Neither Georgia Code § 48-2-35 nor § 48-2-35.1 requires a dealer to prepay potentially refundable taxes to consumers prior to seeking approval of a refund from the Department. And while the Department argues that the wording of the regulation that the dealer may "secure a refund," actually means may "apply for a refund" only after the tax has been refunded to the consumer, that interpretation makes "no sense," today's opinion says. The regulation "does not require a dealer to repay funds to its customers prior to filing a *request* for a refund or prior to the Department's *determination* of whether or not any refund is due."

Under that interpretation, a dealer that collected \$100 million from its customers, paid this amount erroneously to the Department, and later wished to seek a refund, would first have to refund \$100 million to its customers just to initiate the process of seeking the refund. And this would have to be done long before the dealer knew whether the Department would approve any refund at all.

"This is illogical, and creates a strong disincentive for dealers to seek refunds on behalf of customers," the opinion says. "That result, in turn, undercuts the clear intent of § 48-2-35 to ensure that overpaid or illegally collected taxes are returned to taxpayers."

"For all of the reasons set forth above, with regard to the period beginning on May 5, 2009 and ending on September 7, 2010, the Court of Appeals erred by affirming the dismissal of AT&T's case on the basis that AT&T was required to prepay any claimed refund amount to its

customers prior to receiving a determination from the department as to whether any refund will be approved,” the opinion concludes. “With regard to the period prior to May 5, 2009, the Court of Appeals opinion stands vacated for failure to first consider the issue of standing. Finally, with regard to all time periods for which AT&T may have standing, this opinion now requires the Court of Appeals to consider the trial court’s alternative finding that AT&T’s refund action was barred by Georgia’s class action law.”

Attorneys for Appellants (AT&T): Bryan Vroon, Margaret Wilson

Attorneys for Appellees (Department of Revenue): Christopher Carr, Attorney General, W. Wright Banks, Jr., Dep. A.G., Alex Sponseller, Sr. Asst. A.G.

STEPHENS V. THE STATE (S18A0421)

The Georgia Supreme Court has unanimously upheld the murder conviction and life prison sentence a woman received in **Bartow County** for the death of her 14-month-old daughter who died after ingesting cocaine.

Stephanie Stephens and Anthony Tawon Williams lived in a rental home in Cartersville with their children, including their toddler daughter, Jewell Williams. According to witnesses, the couple sold crack-cocaine from their home, typically keeping it under an arm of the living room couch or in Stephens’ purse. One witness testified that while Stephens sometimes ordered the children out of the room during a drug deal, Jewell would typically come back into the room before the drug deal was done.

On the night of June 15, 2007, Jewell apparently found some of the cocaine and ingested it. Early the next morning, emergency personnel responded to a 911 call to the home where they found Jewell in severe distress. According to the medical personnel, the baby had a very weak pulse and an irregular, gasping breathing pattern that is often related to cardiac arrest and death. Jewell was transported to the local hospital where she was pronounced dead. An autopsy showed the toddler had died from acute cocaine toxicity. In the couple’s home, an officer noticed a crystalline substance on the floor in front of the couch, and the contents of a vacuum cleaner plugged into the wall nearby later tested positive for cocaine.

In September 2008, a Bartow County grand jury indicted Stephens and Williams for felony murder, cruelty to children, contributing to the deprivation of a minor, possession of cocaine and possession with the intent to distribute cocaine. In October 2008, a fugitive task force arrested the couple in Atlanta. Following a hearing, the trial court allowed four women to testify that they had visited the home numerous times to buy cocaine, most often from Stephens but sometimes from Williams. Following a four-day trial, the jury found both Stephens and Williams guilty of all charges. On Nov. 2, 2015, the Georgia Supreme Court upheld Williams’ convictions and life prison sentence. Stephens ultimately was sentenced only on one count – felony murder based on possession of cocaine with intent to distribute. In her current appeal before the state Supreme Court, Stephens argues the evidence was insufficient to convict her of felony murder because the State failed to prove a connection between the drug possession charge and her child’s death.

But in today’s opinion, “We reject that argument, just as we rejected the same argument in the appeal of her co-defendant,” **Justice Nels S.D. Peterson** writes for the Court.

Stephens argued that the State failed to prove that the drug offense was dangerous per se or created a foreseeable risk of death. “But as we explained in rejecting essentially the same

argument by Stephens’s co-defendant, ‘the facts support the unmistakable conclusion that the victim ingested the deadly dose of cocaine after finding it in the place where [Williams and Stephens] stored it to sell others,’” the opinion says. “Accordingly, the evidence is sufficient to support Stephens’s conviction for felony murder arising out of possession of cocaine with intent to distribute.”

The Court finds that the merger or vacating of all of Stephens’ convictions except for the felony murder conviction for which she was sentenced, renders moot her arguments as to any counts other than that one.

Attorney for Appellant (Stephens): Steven Miller

Attorneys for Appellee (State): Rosemary Greene, District Attorney, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague Asst. A.G.

WILLIAMS V. THE STATE (S18A0001)

In another case involving the murder of a child, the Georgia Supreme Court has upheld the conviction and life prison sentence given to **Michael Williams** for the beating death of his girlfriend’s 4-year-old son.

In today’s unanimous opinion, **Presiding Justice Harold D. Melton** writes that the “evidence was sufficient to enable a rational trier of fact to find Williams guilty of malice murder beyond a reasonable doubt.”

According to the facts of the case, Williams became involved in a relationship with Yakeera Patrick, who had two children, 4-year-old Nasir Patrick and a 3-year-old daughter. Williams occasionally babysat for Patrick while she was at work. The afternoon of Jan. 25, 2012, the children were at home with Williams while their mother was at work. Around 5:00 p.m., paramedics were dispatched to an apartment on Hubbard Street in Atlanta, **Fulton County**. They found Nasir lying on the floor, having a seizure and barely breathing. Nasir was taken to Hughes Spalding children’s hospital where doctors found him unresponsive to external stimuli. Nasir’s right pupil was dilated larger than the left and unresponsive to light, which suggested severe pressure on the brain. His heart rate was low and he had to be intubated. Eventually, the little boy was transferred by helicopter to Scottish Rite children’s hospital in northern Atlanta where he was seen by a child abuse pediatrician, Dr. Stephen Messner. Nasir had a fracture at the back of his skull and swelling of the brain. Blood covered his brain, including under the brain’s surface and between the two halves.

The next day, on Jan. 26, Williams waived his *Miranda* rights and gave a statement to police. Williams said that Nasir had been complaining about his head hurting and was sweating through his shirt after his nap. After he woke up, Nasir ate, but then threw up. Nasir began playing on the floor with his toy trucks. When Nasir stood up, he appeared dizzy, then fell back onto his toy ambulance, and his eyes rolled back in his head. Williams said that was when he called 911.

While Nasir was in the hospital, Williams told a neighbor, “If that baby die, they going to give me life.” When the neighbor asked if he had hurt the child, Williams responded that he did not “mean for that to happen.”

On Feb. 6, 2012, Nasir died after being taken off life support, and Williams was arrested in connection with the child’s death. At Williams’ trial, Dr. Messner, the Scottish Rite child abuse pediatrician, testified that Nasir’s injuries were inconsistent with Williams’ account that

Nasir had fallen and hit his head on the truck. The widespread distribution of blood indicated that significant, or possibly repeated force had been used on his head.

Nasir's younger sister, who was 4 at the time of the trial, testified that Williams had hurt Nasir with a belt and had hit him repeatedly in the head and legs with a television remote. The medical examiner testified that the autopsy showed Nasir had died of blunt force trauma to the head. In the medical examiner's opinion, the child's skull fracture was the result of an adult pounding Nasir's head against a hard surface, which made the injury "catastrophic," instantly rendering the boy "nonfunctional" and "comatose." There was also evidence of two additional impacts, one to the right side of Nasir's head and one to his forehead, which caused bleeding beneath the scalp. All three head injuries appeared to have occurred within 36 hours.

In connection with Nasir's death, Williams was indicted for malice murder, two counts of felony murder, aggravated assault and first degree cruelty to children. He was also charged with aggravated assault, aggravated battery and first degree cruelty to children for allegedly breaking the leg of Nasir's sister. Following a May 2013 trial, the jury found Williams guilty on all charges relating to Nasir, and he was sentenced to life in prison. The jury acquitted Williams of all charges relating to his sister.

In his appeal before the Georgia Supreme Court, Williams argued several things, including that the trial court erred by denying him funds to hire a medical expert. "We disagree," today's opinion says. "Due to Williams' failure to provide sufficient information to the trial court to allow the court to make an informed decision about his need for assistance, we cannot say that the trial court abused its discretion in denying the motion for funds."

The high court has also rejected Williams' arguments that he received ineffective assistance of counsel in violation of his constitutional rights and that the trial court erred in striking "juror number 10" for cause. Williams argued that his trial attorney was ineffective because he failed to provide the trial court with sufficient information to allow it to grant his request for funds to hire an expert witness. But at the hearing regarding Williams' motion requesting a new trial, Williams' expert ultimately agreed with the State's medical examiner that the victim most likely did not suffer the skull fracture from falling onto a plastic truck and that the fatal injury was caused by blunt force trauma. "Williams has failed to demonstrate a reasonable probability that the outcome of the trial would have been different had trial counsel obtained funds for his own medical expert to testify at trial," the opinion says.

Attorney for Appellant (Williams): Chaunda Brock

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Marc Mallon, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.

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

- * Keyon Brown (Fulton Co.)
- * Derrell Hendrix (Chatham Co.)

BROWN V. THE STATE (S18A0262)
HENDRIX V. THE STATE (S18A0382)

- * Lavioris Jackson (Fulton Co.) **JACKSON V. THE STATE (S18A0127)**
- * Jahbari Jones (Cobb Co.) **JONES V. THE STATE (S18A0263)**
- * Lewis Mitchell, Jr. (Lowndes Co.) **MITCHELL V. THE STATE (S18A0193)**
- * Teflon Derron Rhoden (Fulton Co.) **RHODEN V. THE STATE (S18A0116)**
- * Jermorris Lamonta Russell (Newton Co.) **RUSSELL V. THE STATE (S18A0091)**
- * Xavier Snelson (Cobb Co.) **SNELSON V. THE STATE (S18A0272)**
- * Angelica R. Soto (Cobb Co.) **SOTO V. THE STATE (S18A0346)**
- * Clifford Jacob White (Worth Co.) **WHITE V. THE STATE (S18A0429)**

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

- * Gregory Reece Barton **IN THE MATTER OF: GREGORY REECE BARTON (S18Y0601, S18Y0602)**
- * Miguel Angel Garcia, Jr. **IN THE MATTER OF: MIGUEL ANGEL GARCIA, JR. (S18Y0158, S18Y0159)**

The Court has ordered the **three-year suspension** of attorney:

- * John Benneth Iwu **IN THE MATTER OF: JOHN BENNETH IWU (S18Y0694)**