



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

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PUTNAL V. THE STATE (S18A0018)

The Supreme Court of Georgia has reversed a pre-trial ruling in a **Polk County** case in which the State is seeking the death penalty against a man accused of the sexual assault and murder of his girlfriend's 21-month-old daughter.

In today's unanimous decision, written by **Justice Michael P. Boggs**, the high court has ruled that the trial court erred in revealing to the prosecution the defense attorneys' motions to keep secret their requests for access by mental health experts to examine their client. As this Court has ruled in previous cases, "a defendant has a legitimate interest in making requests for access to expert assistance ex parte if not doing so would place him in the position of 'revealing his theory of the case,'" the opinion says.

In this highly publicized case, the State is seeking the death penalty against **Dustin Drew Putnal**, who was 27 years old when he was accused of murdering 21-month-old Ella Grayce Gail Pointer while her mother was at work. Putnal is due to be tried for one count each of malice murder, aggravated battery, and aggravated sexual battery, and two counts each of felony murder and cruelty to children in the first degree. At trial, the State will attempt to prove that on Oct. 28 or 29, 2016, Putnal caused the toddler's death by inflicting blunt force trauma to her head after committing sexual battery against her by penetrating her vagina with an unknown foreign object.

Because Putnal is indigent, he is represented by the capital defender division of the Georgia Public Defender Council. State law requires the State to fund the costs of obtaining expert witnesses for indigent capital defendants, so Putnal does not need to apply for county funds for expert assistance. However, he must obtain an order from the trial court to allow his

expert consultants to gain access to him, as the Polk County sheriff requires a court order for outside parties to be allowed to examine inmates in the county detention center where Putnal is incarcerated. In June 2017, Putnal's attorneys presented the court with "ex parte" motions, requesting that two mental health experts retained by the defense be allowed access to Putnal at the detention center where he was incarcerated. (An "ex parte" motion is a motion made without notice to the other side, which in this case is the State.) Each motion included the expert's name, discipline, and the type of examination the expert would conduct. On June 27, 2017, the judge signed two orders proposed by the defense, each of which stated that the order "shall be confidential and shall not be disclosed until such direction from the court." Yet three days later, the trial judge – acting on his own and without prior notice to the defense – filed both motions and orders publicly with the clerk of court and had the motions served upon the State. In a reply email, the defense attorney objected to the trial court's public disclosures.

After the trial court issued an order denying Putnal's motion to proceed ex parte and under seal, his attorneys appealed the pre-trial ruling to the state Supreme Court, arguing that the ruling cripples Putnal's right to prepare his defense under the protection of attorney-client privilege. The Supreme Court agreed to review the case, instructing the parties to address whether the trial court erred in denying Putnal's motion to proceed ex parte and under seal with regard to matters pertaining to his expert mental health evaluation. The high court also asked the parties to discuss the effect of the Georgia Supreme Court's 1992 decision in *Zant v. Brantley*, in which it ruled that the State was not entitled to be present at a hearing concerning the defendant's request for an access order similar to the access orders involved in Putnal's case.

In today's 28-page opinion, "we conclude that the issue presented in this case is controlled by *Brantley*. We therefore reverse the trial court order from which Putnal appeals, and we remand this case for further proceedings consistent with this opinion," the opinion says.

"Here, the trial court's disclosures occurred less than three months after the State filed a notice of its intent to seek the death penalty, and the disclosures revealed the identities of the first two mental health experts that defense counsel has retained to examine Putnal. As a result, the State has known since the beginning of the defense's investigation of the case what defense theory and mitigation strategy were being considered and explored."

The State argued that it had anticipated the defense would explore Putnal's mental health before trial, and thus no trial strategy was revealed by the trial court's disclosures. However, "The State's argument is not persuasive," today's opinion says. "The State's 'expectation' is not equivalent to discovering the defense or defenses a defendant is actually exploring or to learning details of the defense's investigation."

The State also argued that Putnal cannot suffer any harm from the trial court's disclosures because they did not reveal the results of any evaluation or whether Putnal plans to proceed with a defense at trial based on the examinations. "We disagree," the opinion says. "The two motions and orders revealed to the State contain the identities of Putnal's experts and their specialized areas of practice within the mental health field, the specific items that the experts intend to bring into the detention center to use to examine and test Putnal, and the defense's generalized bases for seeking to conduct those examinations."

"Although it is impossible to know with certainty before trial whether and to precisely what extent Putnal has been prejudiced, it is conceivable that, without additional curative measures, he could turn out to have been prejudiced to an extent that would require any

conviction or sentence to be set aside,” the opinion says. “We do not attempt to ascertain the likelihood of such prejudice, but we remand for the trial court to do so and to consider in light of its assessment of the likelihood of prejudice whether additional curative measures are now in order.” Among other things, the opinion says, “the trial court on remand should first consider the possibility that the defense may not call as witnesses at Putnal’s trial the mental health experts revealed to the State.” Putnal “*never* should have been required to reveal the names of these experts to the State, much less any other information about them or their services relating to Putnal.”

Also on remand, “Given that the State is seeking the death penalty against Putnal, his right to investigate for mitigating evidence is also pertinent to the analysis,” today’s opinion says.

“We express no opinion about what additional curative measures, if any, are in order at this point,” the opinion concludes. “The trial court, however, should do what it can to ensure that the proceedings in this case from this point forward are not tainted by its improper disclosures of Putnal’s ex parte motions and orders to an extent that ultimately would require the setting aside of any conviction or sentence.”

Attorneys for Appellant (Putnal): Gerald Word, Crystal Bice, Office of the Georgia Capital Defender

Attorneys for Appellee (State): Oliver Browning, Jr., District Attorney, Jordan Stover, Asst. D.A.

SMITH V. THE STATE (S18A0333)

The Supreme Court of Georgia has upheld the murder and arson convictions of a young man for his role in bludgeoning and stabbing to death his 15-year-old girlfriend in **Bacon County**, then setting her body on fire.

In today’s opinion, **Justice Britt C. Grant** writes for a unanimous court that the evidence introduced at trial against **Deion Smith** “was sufficient to authorize a rational trier of fact to find Smith guilty beyond a reasonable doubt of the crimes of which he was convicted.”

According to the facts at trial, shortly before her death, 15-year-old Jasmine Moore told her cousin she thought she could be pregnant with Smith’s child. At the time, the cousin herself was pregnant by Smith. When Smith heard that Moore might be pregnant, he discussed killing her with his friend, Tyberius Murchinson. On the evening of Aug. 8, 2009, after Moore’s mother – with whom the girl lived in Alma, GA – went to work, Smith and Murchinson, who were both in their late teens, went to Moore’s house. Smith was armed with a claw hammer and Murchinson was armed with a knife. Moore’s mother had only recently allowed her daughter to stay home alone while she worked the night shift, under strict instructions she was not to open the door for anyone. When Smith and Murchinson arrived at the Moores’ home, the door was locked and no one answered. The two went to a nearby Huddle House, and Smith texted Moore, saying they were coming back and instructing her to open the door. Moore sent a reply text, saying the front door was open. When they arrived at Moore’s home, Smith took the girl back to her bedroom while Murchinson waited in the front of the house.

Soon, Smith began beating Moore with the hammer and she began screaming, yelling that her head was bleeding. At some point, Smith handed Murchinson the hammer and told him to make sure Moore was dead. Murchinson then hit Moore with the hammer about her head and

upper body before concluding she was dead. Throughout the killing, both boys wore cloth gloves they had brought with them. Once satisfied Moore was dead, the boys poured bleach and dumped paper trash from a wastebasket on her body. Smith went to the stove, lit a piece of paper, and set the debris covering Moore's body on fire. After Smith and Murchinson left the house, they dumped the hammer, knife and Moore's cell phone in a nearby storm drain before returning to Smith's house where they showered and burned their clothing in a fire barrel.

When Moore's mother returned from work in the morning, she found her house full of smoke and her daughter's body at the end of the hall. An autopsy showed that Moore had at least 18 blunt force injuries to her face and head consistent with a hammer, at least eight sharp force injuries to her head consistent with a knife, and multiple smaller blunt and sharp force injuries about her body, including injuries to her arms and hands that were in the nature of defensive injuries. The autopsy showed that Moore had been killed before her body was burned, and that she was not, in fact, pregnant.

Although Smith and Murchinson were questioned during the initial murder investigation, there was not enough evidence to arrest them, and the case remained unsolved for nearly five years. But in June 2014, after attending a three-night Baptist revival, Murchinson turned himself in to the Alma Police Department and confessed his role in the murder. With his help, police recovered Moore's cell phone and the knife in a storm drain near Moore's house. In August 2014, Smith and Murchinson were indicted by a Bacon County grand jury for malice murder, felony murder based on aggravated assault, and arson in the first degree. Murchinson pleaded guilty to the less serious charges of aggravated assault and arson and was sentenced to 30 years in prison. As part of his plea bargain, Murchinson agreed to testify for the State at Smith's trial. In April 2016, a jury found Smith guilty on all three counts of the indictment, and he was sentenced to life plus 15 years in prison.

In his appeal to the Georgia Supreme Court, Smith argued that he received "ineffective assistance of counsel" in two ways from his trial attorney, in violation of his constitutional rights. He argued his attorney failed to challenge the indictment as "unconstitutionally vague" because the murder charges alleged that Smith and Murchinson had killed Moore by "striking her with a hammer" and "stabbing her with a knife," but did not specify who had done what.

"This claim is without merit," today's opinion says. "Here, each of the murder counts tracked the language of the applicable statute and alleged the essential elements of the offense charged."

Smith also argued his attorney had been ineffective for failing to cross-examine Murchinson adequately regarding his motivation for testifying for the State. "Smith has failed to show that his trial counsel's cross-examination of Murchinson constituted deficient performance, and his claim on this issue therefore fails," the opinion says.

Attorney for Appellant (Smith): Larry Johnson

Attorneys for Appellee (State): George Barnhill, District Attorney, Alexander Markowich, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Ashleigh Headrick, Asst. A.G.

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

- * Corey Antwon Blount (Clarke Co.) **BLOUNT V. THE STATE (S18A0201)**
- * Keyon Brown (Fulton Co.) **BROWN V. THE STATE (S18A0262)**
- * Shakeim Malcolm Dorsey (Muscogee Co.) **DORSEY V. THE STATE (S18A0121)**
- * Nicambreon M. Flowers (Gwinnett Co.) **FLOWERS V. THE STATE (S18A0241)**
- * Margarita Jean Leanos (Hall Co.) **LEANOS V. THE STATE (S18A0528)**
- * Rajonte McGruder (Jefferson Co.) * **MCGRUDER V. THE STATE (S18A0062)**
- * Karon J. Norman (Liberty Co.) **NORMAN V. THE STATE (S18A0331)**
- * Damien Simpkins (Jefferson Co.) * **SIMPKINS V. THE STATE (S18A0063)**
- * William Slaton (Houston Co.) **SLATON V. THE STATE (S18A0354)**
- * John Taylor (Twiggs Co.) **TAYLOR V. THE STATE (S18A0038)**
- * Zachary Bouvier Taylor (Harris Co.) **TAYLOR V. THE STATE (S18A0276)**
- * Allen Watson (DeKalb Co.) **WATSON V. THE STATE (S18A0427)**
- * William Dontrell Winson (Newton Co.) **WINSTON V. THE STATE (S18A0194)**

* McGruder and Simpkins were co-defendants.

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

- * Ronald John Doeve **IN THE MATTER OF: RONALD JOHN DOEVE (S18Y0456, S18Y0457, S18Y0458)**

The Court has ordered the **2-year suspension** of attorney:

- * David E. Morgan, III **IN THE MATTER OF: DAVID E. MORGAN, III (S18Y0821) (S13Y1548)**

The Court has **rejected petitions for voluntary discipline** from attorneys:

- * Edward Neal Davis **IN THE MATTER OF: EDWARD NEAL DAVIS (S17Y1993)**
- * Ricardo L. Polk **IN THE MATTER OF: RICARDO L. POLK (S18Y0740)**