



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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STRIBLING V. THE STATE (S18A0595)

The Supreme Court of Georgia has unanimously upheld the convictions and life-without-parole prison sentence given to **Bobby Rex Stribling, Jr.** for the 2007 brutal murder of Jesup municipal Judge Glenn Thomas, Jr., the former longtime district attorney of the Brunswick Judicial Circuit.

In today's opinion, **Justice Nels S.D. Peterson** writes for the high court that "the jury was authorized to conclude that Stribling's actions were the proximate cause of Thomas's death." ("Proximate cause" is the legal term for a cause that directly produces an event and without which the event would not have occurred.)

Thomas was well known in southeast Georgia, having served for nearly 30 years as district attorney of the Brunswick Judicial Circuit that covered Camden, Glynn, Wayne, Appling and Jeff Davis counties in southeast Georgia. He then went into private practice and also served 10 years as the judge of Jesup Recorder's Court until his death.

According to the facts at trial, on June 25, 2007, Thomas had lunch with his two daughters before returning to his law office in downtown Jesup, **Wayne County**, where he was due to meet with a client, Don Thomas (no relation). Prior to entering his lawyer's building, Don Thomas had seen Stribling walking near the building and carrying a brown paper bag with something inside. Later, when Don Thomas left the building, Stribling was waiting outside and asked whether anyone else was inside. Don Thomas replied that Glenn Thomas was alone.

Later that day, George Cappleman, came to the building that he shared with Glenn Thomas. When he didn't see Thomas's truck, he assumed Thomas wasn't there. However, when Cappleman entered the office, he found Thomas sitting at his desk. Thomas was bleeding from

his head and had a large bruise under his left eye. He was talking, but he was confused. Cappleman called 9-1-1.

Thomas was taken to a local hospital and then flown to Savannah Memorial Hospital where medical staff placed him on a ventilator and put Thomas in an induced coma to try to reduce the brain swelling. But his condition never improved. Two weeks later, Thomas's family had him removed from life support after doctors told them he was brain dead. Thomas died soon after. An autopsy showed he had suffered at least 15 separate blows resulting in 38 different injuries, including a broken skull. The cause of death was listed as multiple blunt force injuries.

The day after the crime, police saw someone driving Thomas's missing truck and pulled it over. A passenger in the truck reported they had received the truck and some money from two men in exchange for some crack cocaine they had given them. After determining one of the men was Stribling, police arrested him at a nearby motel, where they found Thomas's driver's license, a district attorney's badge, and a check made out to Thomas. After being advised of his rights, Stribling confessed to attacking Thomas. Stribling said Thomas had previously helped him with his criminal case and he had gone to Thomas's office to ask for money. When Thomas refused, Stribling said he "snapped" and struck Thomas three or four times with an object he'd grabbed off Thomas's desk after Thomas said he "would not lend money to a white trash convict." Stribling said that after striking Thomas, he reached into Thomas's pockets and grabbed Thomas's wallet, more than \$1,000 in cash, and the keys to Thomas's truck. He then fled with the truck.

Due to pre-trial publicity, a jury was empaneled from another judicial circuit and in September 2010, it found Stribling guilty of malice murder, aggravated battery, aggravated assault with intent to rob, armed robbery, burglary, and theft by taking. Stribling was sentenced to life without parole for malice murder, a consecutive life sentence for armed robbery, and three consecutive 20-year prison terms, and a consecutive 10-year term for his other crimes.

In his appeal to the Georgia Supreme Court, Stribling's only argument was that the evidence against him was insufficient to support his convictions because there was evidence Thomas might have survived had life support not been withdrawn. Therefore, Stribling contended, the removal of Thomas from life support was the intervening and ultimate cause of his death.

"We disagree," today's opinion says.

Under Georgia statutory law, "A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being."

"The element of causation is determined under the proximate cause standard," the opinion says. And under that standard, proximate cause imposes liability "for the reasonably foreseeable results of a criminal act if there is no independent and unforeseen intervening cause."

"It was reasonably foreseeable that Thomas would be taken off life support when his condition failed to improve and when, according to the doctor's statements to Thomas's family, Thomas was 'basically brain dead' and would likely develop pneumonia," the opinion says. "Under this standard, the jury was authorized to conclude that Stribling's actions were the proximate cause of Thomas's death."

The trial court did err in sentencing Stribling on every count for which he was found guilty, however, as some of his charges should have merged with others, today's opinion says.

As a result, the high court has vacated the two consecutive 20-year sentences imposed for aggravated battery and aggravated assault with intent to rob.

Attorney for Appellant (Stribling): Richard Allen

Attorneys for Appellee (State): Jackie Johnson, District Attorney, Andrew Ekonomou, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Ass. A.G., Matthew O'Brien, Asst. A.G.

PATTERSON ET AL. V. BIG KEV'S BARBECUE (S17G1957)

Under an opinion today by the Georgia Supreme Court, a lawsuit may go forward against a Georgia barbecue caterer brought by a couple who claimed they suffered food poisoning at a wedding rehearsal dinner from chicken prepared by the caterer.

With today's opinion, written by **Justice Michael P. Boggs**, the high court has reversed a Georgia Court of Appeals decision, finding that the intermediate appellate court applied the wrong standard of review in ruling in favor of the caterer. The Court finds that the standard developed over the years by the Court of Appeals has created "the mistaken impression that food poisoning cases 'are a unique species of negligence cases' imposing a heavier burden upon the plaintiff to show proximate cause than that generally required" of defendants at a certain stage of the proceedings.

According to the facts of the case, on June 20, 2014, **Joshua and Taylor Patterson** were among about 40 guests who attended a couple's rehearsal dinner in **Morgan County** at the Brady Inn. **Big Kev's Barbecue**, owned by Kevon, LLC, catered the dinner and served barbecue chicken and some side dishes. A separate company provided dessert and a bartender's service provided alcohol. The next day, Josh and some others ate leftover Big Kev's barbecue, while Taylor and others only consumed the Big Kev's food at the rehearsal dinner the night before. A couple of days after the rehearsal dinner, the Pattersons were in Florida when Josh became very ill with diarrhea, vomiting, high fever and chills. He wound up in a hospital emergency room where he tested positive for salmonella, a bacteria that can cause food poisoning from the consumption of raw or undercooked meats and eggs, or of contaminated dairy foods, fruits or vegetables. His symptoms lasted about a week and due to the diarrhea, he eventually had to undergo surgery for an anal fissure. Taylor Patterson also became sick with similar symptoms and was treated for salmonella infection based on her husband's diagnosis, although she was never tested for salmonella. The Pattersons subsequently learned that about 17 other guests who ate at the rehearsal dinner also became ill, four of whom testified that they experienced the same symptoms within a similar time frame as the Pattersons, with one of them also diagnosed with salmonella. According to the evidence, the only common food that the Pattersons and the four witnesses ate was the food served by Big Kev's. Nevertheless, a number of people who ate the rehearsal dinner and leftovers did not become ill.

The Pattersons sued Big Kev's owner and operator, Kevon, LLC, claiming that the food served at the dinner catered by Big Kev's had been negligently prepared and caused their illnesses. They also claimed that Kevon had violated the Georgia Food Act by serving food that was adulterated and that Kevon was strictly liable for failing to warn the Pattersons of defective conditions in the food. Kevon filed a motion asking the court for "summary judgment" in its favor. (A court grants summary judgment when it determines there is no need for a jury trial because the facts are undisputed and the law falls squarely on the side of one of the parties.) In

its motion, Kevon argued the Pattersons had failed to prove that the food prepared and served by Big Kev's was the "proximate cause" of the Pattersons' illnesses. (Proximate cause is the legal term for a cause that directly produces an event and is legally sufficient to result in liability.) Specifically, Kevon noted the absence of scientific testing or other direct evidence that the food was underprepared or otherwise unfit for consumption. Therefore, the Pattersons had to rely on circumstantial evidence to prove their claim, and that required them to show that every other reasonable hypothesis as to the cause of their illness could be excluded. Kevon argued they failed to meet this burden.

Following a hearing, the trial court ruled in favor of Kevon and Big Kev's, granting them summary judgment. The Pattersons then appealed to the Court of Appeals, but in a 5-to-4 decision, that court's majority agreed with the trial court and upheld the ruling, finding the Pattersons had failed to meet the burden of ruling out every other reasonable hypothesis. The intermediate appellate court ruled that the Pattersons' theory of the case did not exclude the possibility that the illness was transmitted to them from a source other than the food served by Big Kev's or explain why others who consumed the dinner did not get sick. Likewise, Taylor Patterson did not get sick until several days after her husband became ill, and she did not exclude the possibility that she became ill based on her exposure to him. Two dissents to the Court of Appeals majority decision pointed out that the standard established by the majority was more appropriate for the burden of proof required once a case goes to trial as opposed to prior to trial when one of the parties requests summary judgment. The Pattersons then appealed to the state Supreme Court, which agreed to review the case to determine whether the trial court was correct in granting summary judgment and stopping the lawsuit from going forward.

"An examination of the evidence presented by the parties here demonstrates that summary judgment was not appropriate," today's opinion says. Big Kev's sought to use circumstantial evidence to show there was no causal link between its food and the plaintiffs' illness, arguing that others at the dinner did not get sick; the Pattersons and others consumed dessert and beverages prepared by someone other than Big Kev's; leftovers may have been improperly stored; and the Pattersons did not begin to feel ill until three to five days after the dinner. But the Pattersons disputed that evidence point by point.

"Obviously, the standard of review on an appeal from a jury verdict is different than that for summary judgment, and 'the fact that a moving party has failed to prevail at the summary judgment stage does not necessarily mean that the party will not later be able to prevail at trial,'" the opinion points out.

At this stage of the proceedings, "Big Kev's has failed to demonstrate the absence of evidence of proximate cause," the opinion states. "The trial court's order granting summary judgment on that issue therefore must be reversed."

Attorneys for Appellants (Pattersons): Blakely Frye, Travis Cashbaugh

Attorneys for Appellee (Kevon): Pamela Lee, David Smith

MCCULLOUGH V. THE STATE (S18A0855)

The Supreme Court of Georgia has upheld the murder convictions and life-without-parole prison sentence given to a man for the shooting deaths of his disabled father and great aunt who lived together in **Newton County**. **Brawny Jarvis McCullough** appealed his convictions, arguing in part that the evidence was insufficient to convict him.

In today's opinion, however, **Justice David E. Nahmias** writes for a unanimous court that "the evidence presented at trial was sufficient to authorize a rational trier of fact to find Appellant [i.e. McCullough] guilty beyond a reasonable doubt of the crimes of which he was convicted."

According to the evidence at trial, in 2008, Brawny's father, Donald Eugene McCullough ("Gene"), was living in Alabama when someone attempted to shoot him through the door of his house, but missed. In 2010, again, someone attempted to shoot him at his door and managed to hit him twice, paralyzing him from the waist down. Gene then moved to Covington, GA, to live with his aunt, Peggy Molden. Gene's son, Brawny, also lived in Georgia and sometimes visited his father and great aunt.

On Feb. 5, 2012, Brawny told a coworker, Bernard Watts, that he had arranged for a man to shoot Gene in 2010. He also told Watts that he was currently planning to hire Watts' cousin, Jonathan Henderson, for \$10,000 to kill his father who had taken out a \$150,000 life insurance policy, naming Brawny as the primary beneficiary.

Two days later, on Feb. 7, 2012, paramedics responded to a Life Alert call from Gene and Molden's house. They found Gene, who had been shot seven times, lying dead between his bed and the wall. When Sheriff's officers and GBI investigators arrived at the house, they found Molden dead from a single gunshot wound to the head, lying on the basement stairs. They found a .38-caliber shell casing in the driveway, a .38 projectile on the floor by the front door, and two more .38 projectiles under Gene's bed. Later that night, Brawny told his roommate he was about to receive a lot of money from his father's life insurance policy. Several times during the next week, Brawny contacted investigators and family members to inquire about the insurance.

About a week later, Watts contacted law enforcement and relayed what Brawny had told him. The GBI then obtained cell phone records that showed Brawny and Henderson had exchanged numerous calls and text messages in the days leading up to the murders. On Feb. 17, Brawny and Henderson were arrested. Later that day, both confessed to investigators. In June 2012, the State announced it would seek the death penalty against them.

In his videotaped confession, which was played for the jury, Brawny said he was angry at his father because Gene had always treated him badly. He said that in 2008, after he had complained about Gene to Henderson, Henderson had shot at Gene and missed. Brawny blamed the idea and execution of the 2012 murder of his father on Henderson. Brawny did not testify at trial, but Henderson did in exchange for the State's withdrawal of its intent to seek the death penalty. According to Henderson, Brawny had asked him in 2008, 2009, 2010, and late 2011 or early 2012 to kill Gene for \$10,000, but Henderson had refused. On the day of the murders, Henderson said he drove Brawny to his father's house because Brawny said his father was sick and he wanted to visit. Once there, Henderson said Brawny shot his great aunt first, then his father. Brawny later warned Henderson not to tell police about the shootings and Henderson fled to South Carolina. Also at trial, another man, Dustin Huddleston, testified that Brawny had offered him money in 2010 to kill Gene. The two went together to Gene's house where Brawny shot his father, according to Huddleston.

According to the autopsy, in addition to three recent bullet fragments, the medical examiner found two older ones in Gene's body from the 2010 shooting. A ballistics expert determined that all of the bullet fragments were fired from the same .38-caliber revolver.

On appeal, Brawny argued that the State presented no physical evidence such as fingerprints or DNA linking him to the crimes, and that the State’s main witness, Henderson, was biased against him because his testimony was in exchange for a deal.

“As we have explained many times, however, ‘it is the role of the jury to resolve conflicts in the evidence to determine the credibility of witnesses, and the resolution of such conflicts adversely to the defendant does not render the evidence insufficient,’” today’s opinion says. Furthermore, the State is not required to corroborate its witnesses with physical evidence, and it is up to a jury to determine how a witness’s deal with the State affects his credibility. The State presented “ample evidence” of McCullough’s guilt, including evidence that he had tried to hire other men to kill his father several times beginning in 2008, the opinion says.

Brawny also argued on appeal that his Sixth Amendment right to counsel was violated when the trial court denied his request for a postponement of his trial due to the schedule of one of his lawyers. “Whether to grant a request for a continuance is a matter within the discretion of the trial court,” the opinion says. “We see no abuse of that discretion, and no Sixth Amendment violation, under the circumstances of this case.”

However, the high court has found that the trial court did err in sentencing Brawny by failing to merge his conviction for the aggravated assault of Gene into the malice murder of Gene for sentencing purposes, as the aggravated assault was based on the same shooting that caused Gene’s death. “We therefore vacate [McCullough’s] conviction and sentence for the aggravated assault of Gene,” today’s opinion says.

Attorney for Appellant (McCullough): Teresa Doepke

Attorneys for Appellee (State): Layla Zon, District Attorney, 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:

- * Raven Marie Delaney (Catoosa Co.)
- * Raymon Jamaal Green (Bibb Co.)
- * Joseph Irvine Harris (Clayton Co.)

DELANEY V. THE STATE (S18A0637)

GREEN V. THE STATE (S18A0796)

HARRIS V. THE STATE (S18A0826)

(The Supreme Court has upheld Harris’s convictions and sentences for malice murder, burglary, aggravated assault, cruelty to children, and criminal trespass. However, it finds that the evidence was insufficient to convict Harris beyond a reasonable doubt of three counts of false imprisonment and has reversed the convictions and sentences he received for them.)

- * Orlando Lamar Hawkins (Fulton Co.)

HAWKINS V. THE STATE (S18A0886)

- * Corey Jones (Fulton Co.)

JONES V. THE STATE (S18A1026)

- * Quinttavish Kennedy (Fulton Co.)

KENNEDY V. THE STATE (S18A0845)

- * Dexter Lamar Parks (Cobb Co.)
- * Joshua Starks (Gwinnett Co.)
- * Taurean Thorpe (Fulton Co.)

PARKS V. THE STATE (S18A0949)
STARKS V. THE STATE (S18A0902)
THORPE V. THE STATE (S18A0732)

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for voluntary discipline and ordered the **21-month suspension** with conditions for reinstatement of attorney:

- * Nathaniel Antonio Barnes, Jr. **IN THE MATTER OF: NATHANIEL ANTONIO BARNES, JR. (S18Y0982)**

The Court has accepted a petition for voluntary discipline and ordered the **6-month suspension** with conditions for reinstatement of attorney:

- * Ricardo L. Polk **IN THE MATTER OF: RICARDO L. POLK (S18Y1385)**