



## 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

Published Monday, October 22, 2018

**Please note:** *Opinion summaries are prepared by the Public Information Office for the general public and news media. Summaries are not prepared for every opinion released by the Court, but only for those cases considered of great public interest. Opinion summaries are not to be considered as official opinions of the Court. The full opinions are available on the Supreme Court website at [www.gasupreme.us](http://www.gasupreme.us).*

### **WILLIS V. THE STATE (S18P0915)**

The Supreme Court of Georgia has ruled unanimously to uphold the three death sentences given to **Demetrius G. Willis** for the 2004 murders of a couple and their 3-year-old son.

In today's opinion, "we vacate Willis's convictions and sentences for three counts of aggravated assault with a deadly weapon, but we affirm all of Willis's remaining convictions and sentences, including his death sentences for the murders," **Justice Robert Benham** writes for the Court.

In the early hours of June 28, 2004, five members of a family who lived on Westwood Avenue in **Fulton County** were shot. Three were killed, including a 3-year-old and his parents, and two more children were injured. Thirty-year-old Jerry D. Williams was shot at close distance three times in the back of his head as he lay on a couch in the living room. Each shot was fatal. Twenty-six-year-old Talisa Hankins was shot twice in the back of the head and once in the back of her shoulder. It appeared as though she had been trying to escape through a window of a bedroom at the time of her death. Four young children were in another bedroom. Three-year-old Jerry D. Williams, III, whose nickname was "Man-Man," was fatally shot in the left side of his forehead. Five-year-old C.H. was shot in her upper back, and 10-year-old Q.H. was shot in her thigh. The fourth child, 6-year-old J.H., hid under the bed during the shooting and was the only one who escaped injury. C.H., J.H., and "Man-Man" were the children of Williams and Hankins. The oldest child, Q.H., was Hankins' daughter by a previous relationship with Willis.

According to the evidence at trial, on June 25, 2004, Willis, 27, whose nickname was "Sweet Pea," rode to Atlanta with two friends from his home in Clarksdale, Mississippi. While

there, Willis attended a barbecue on Sunday, June 27, at the home of Williams and Hankins. Later he went out drinking with friends, returning to his friend Ray Hollins' home at about 5:00 a.m. Willis asked Hollins to ride with him back to the home of Williams and Hankins so he could see his daughter before he returned to Mississippi. With Willis driving, the two went back to the home on Westwood Avenue. Hollins remained in the car while Willis went inside. Hollins later said he could hear Hankins speaking to Willis, and she said, "Sweet Pea, what's wrong with you?" Multiple gunshots followed. C.H. later testified that she saw Willis shoot Hankins and that she then ran into the bedroom where the other children were. Willis went into that bedroom and started shooting. Jerry III was standing when Willis shot him in the head. C.H. was on her bed when he shot her in her back/shoulder. Like J.H., Q.H. tried to hide under one of the beds, but was still shot in the thigh. According to Q.H., her father was wearing a yellow-looking jersey and jeans. Q.H. said she did not see anyone other than Willis doing the shooting.

Outside, after hearing the gunshots, Hollins initially got out of the car and ran up the street, but then he turned around, headed back, and saw Willis leaving the home carrying a pistol. Hollins noticed that Willis had specks of blood on his face and shirt. Hollins asked Willis what had happened, and Willis replied he had killed everyone in the house. He never said why.

The next day, Willis and his friends rode back to Mississippi in the black Impala car they had used throughout the trip. On the way, Willis stopped and threw the shirt he had been wearing into a trash can and the pistol into a body of water. Once back in Mississippi, Willis turned himself in.

After he was returned to Georgia, Willis was indicted on three counts of malice murder, nine counts of felony murder, six counts of aggravated assault with a deadly weapon, and one count each of burglary, first degree child cruelty, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. In September 2004, the State announced it would seek the death penalty. Following a 2008 trial, the jury convicted Willis of all counts except the aggravated assault of J.H. and the counts involving burglary. Willis was sentenced to death for each of his convictions for malice murder, plus additional years for his other crimes.

"When viewed in the light most favorable to the verdicts, we conclude that the evidence was sufficient to authorize a rational trier of fact to find Willis guilty beyond a reasonable doubt of the crimes for which the jury returned guilty verdicts," today's opinion says.

In this appeal in a death penalty case, Willis's attorneys have asserted that a number of errors were made during jury selection, during the guilt-innocence phase of the trial, and during the sentencing phase of the trial. Among the pre-trial motions they contend were erroneously denied by the trial court were his motion to strike down the death penalty as unconstitutional "cruel and unusual punishment." In today's 69-page opinion, the high court has addressed each alleged error and rejected them all.

Nevertheless, while the evidence was sufficient to support the verdict, the opinion says the State correctly pointed out that the trial court erred in sentencing Willis separately for the three aggravated assault counts involving the murder victims. Both the malice murder and the aggravated assault counts were based on the act of shooting the victims with a firearm.

"Therefore, Willis's convictions and sentences for aggravated assault with a deadly weapon of Hankins, Williams, and Jerry III must be vacated," the opinion says.

With today's opinion, the Supreme Court has overruled two of its previous decisions involving the use of "peremptory strikes:" its 1986 ruling in *Harris v. State* and its 2003 ruling in *Fortson v. State*. During jury selection in a death penalty trial, prosecutors and defense attorneys each get 15 peremptory strikes, meaning they can strike up to 15 prospective jurors without disclosing why. Such strikes differ from striking a prospective juror for cause. For example, a person may be disqualified to serve as a juror because he expresses a bias against the defendant. Previously, under *Fortson* and *Harris*, this Court has held that "causing a defendant to unnecessarily use a peremptory strike on a juror that should have been excused for cause is per se harmful error." With today's opinion, however, "we overrule our previous holdings to the contrary and hold now that it is harmless error where a defendant's motion to excuse a prospective juror is erroneously denied but the juror is subsequently removed from the defendant's 12-person jury by his or her use of a peremptory strike."

**Attorneys for Appellant (Willis):** Charley Frier, Akil Secret

**Attorneys for Appellee (State):** Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., Kevin Armstrong, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Sabrina Graham, Sr. Asst. A.G., Channell Singh, Asst. A.G.

### **JONES V. THE STATE (S18A0775)**

The Supreme Court of Georgia has unanimously upheld the murder conviction and life prison sentence given to **Rico Jones** in connection with the drowning death in **Dougherty County** of his girlfriend's 3-year-old daughter, Camyria Arnold.

At the same time, however, the high court has reversed Jones's convictions for three counts of second-degree cruelty to children for smoking marijuana in the presence of Camyria and her siblings.

The evidence at trial as outlined in today's opinion showed the following: "On December 26, 2010, at around 7:00 a.m., Jones drove his girlfriend, Porsha Harper, to work at a Waffle House. The two had one child together, one-year-old P.J., who rode in the car with Jones when he took Harper to work. Harper also had two other children, three-year-old Camyria and five-year-old N.H., whom Jones left at home asleep in the family's Albany apartment.

"A few hours after Jones dropped Harper off, Jones returned to the Waffle House with N.H. and P.J. in the car and told Harper that he had taken Camyria to the hospital. Jones told Harper that when the children got up that morning, he discovered that Camyria and N.H. had wet the bed. He disciplined the two children by spanking them with a belt and then gave them a bath. After the children got out of the bath, Jones told Camyria and N.H. to lie down for a nap. Jones then fell asleep for "five to ten minutes" before waking up to P.J. crying. When he woke up, Jones said, he noticed Camyria walking strangely, as though she were dizzy or drunk, and she looked drowsy. As Jones explained it, he thought Camyria might have swallowed some medicine, so he put his finger down her throat and she threw up a little bit of water and red fluid. Jones said that he then held Camyria under a cold shower for one or two seconds to try to wake her up. He said that Camyria seemed more alert for a few minutes, but then began acting drowsy again, so he rushed her to the hospital.

"Upon arrival at the hospital, Camyria was unresponsive, barely breathing, and had a core body temperature of 91 degrees, indicating that her body was shutting down and she was 'about half dead.' Her eyes were fixed and dilated, suggesting significant brain injury. The attending

physician, Dr. Raymond Gutierrez, heard ‘rales’ or crackling sounds when he listened to her breathing, indicating that she had fluid in her lungs. Camyria vomited a pink-tinged watery emesis, which also can be a sign of fluid overloading the lungs. Dr. Gutierrez ordered a CT scan, which showed swelling of the brain, and a chest x-ray, which showed inflammation and “infiltrates” (foreign matter) in the lungs. Blood tests showed that Camyria had a critically low sodium level. She had fresh purple-and-red linear bruises on her inner left thigh and outer right thigh and hip, and also had fresh bruises on her abdomen....

“After Harper arrived at the hospital, Dr. Gutierrez told Harper and Jones that Camyria probably would not survive. Harper was very upset, but Jones did not respond. Because the hospital in Albany was not equipped to care for critically ill children, Camyria was transferred to a hospital in Macon, where she passed away on December 27, 2010.”

Following an autopsy, a Georgia Bureau of Investigation medical examiner concluded Camyria had died from complications from asphyxia, most likely caused by drowning. At trial, Dr. Gutierrez testified that the child likely had been drowned by being submerged and held under water.

At trial, the State also presented three witnesses who testified about the potential harm done to children by second-hand marijuana smoke.

Following the July 2015 trial in Dougherty County, the jury found Jones guilty of felony murder, five counts of cruelty to children in the second degree, and one count of possession of marijuana. He was sentenced to life in prison plus 10 years on probation. Jones then appealed to the Georgia Supreme Court, arguing that the evidence was insufficient for the jury to find him guilty of felony murder and the five counts of cruelty to children in the second degree.

“We disagree with respect to the conviction of felony murder and the two predicate counts of second-degree child cruelty that merged into it and affirm that conviction because the evidence is legally sufficient to support it,” **Justice Sarah H. Warren** writes in today’s opinion. “We agree, however, that the evidence is legally insufficient to support Jones’s convictions for three counts of second-degree child cruelty based on smoking marijuana in the presence of children and, as a result, reverse those convictions.”

Under Georgia Code § 16-5-70 (c), to prove second-degree cruelty to children, the State must present evidence that establishes beyond a reasonable doubt that the child suffered “cruel or excessive physical or mental pain.”

“But even presuming that Jones did smoke marijuana around the children, the State presented no evidence that Jones’s smoking marijuana in the presence of Camyria, N.H., and P.J. caused them physical or mental pain, much less ‘cruel or excessive physical or mental pain,’” the opinion says. “Indeed, the record is devoid of evidence that any of the three children experienced pain from inhaling marijuana smoke, or that they suffered a physical or mental injury caused by marijuana smoke. At most, the evidence showed that smoking marijuana around the children was ‘not good’ for them and created an increased risk of future negative health effects. That is not enough to meet the State’s burden.”

In a concurrence, **Justice David E. Nahmias** writes that he agrees with the Court’s opinion, including the observation that there could be a case in which exposure of children to marijuana smoke would constitute second-degree child cruelty. “This possibility, however, should not make us overlook what the State is trying to accomplish in this case,” says the concurrence, which is joined by Justices Keith R. Blackwell, Michael P. Boggs, and Nels S.D.

Peterson. “The health risks posed by exposure to tobacco smoke are more widely understood and scientifically established than the dangers of exposure to marijuana smoke. If all it takes to prove felony child cruelty is the sort of evidence the State presented in this case, it would not be difficult at all for the State to find doctors who could testify about the general health problems cigarette smoke can cause children and the dangers of long-term exposure to cigarette smoke, or to find witnesses who could testify that they have personally experienced negative effects when exposed to cigarette smoke.”

“Our State’s prosecutors should be more judicious about their views regarding the reach of the criminal statutes they enforce, rather than seeking to extend those statutes in ways that would effectively criminalize the conduct of large swaths of our State’s population,” the concurrence says. “The Court today properly rejects the State’s assertion that the evidence it presented at trial proved that Jones violated [Georgia Code] § 16-5-70 (c), and in so doing, the Court prevents the State from acquiring a prosecutorial weapon of vast and unsupported scope.”

**Attorney for Appellant (Jones):** Troy Golden

**Attorneys for Appellee (State):** Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.

### **RIVERA V. THE STATE (S18A1171)**

In another murder of a 3-year-old child, the Supreme Court of Georgia has unanimously upheld the conviction and life prison sentence given to **Selena Rivera** for beating her granddaughter to death.

According to the facts at trial, at around 10:30 p.m. on Aug. 21, 2012, emergency medical personnel and law enforcement officers responded to a **DeKalb County** apartment concerning 3-year-old Neveah Pinckney. The child had no pulse and was not breathing. She was transported to Eggleston Children’s Hospital where, following attempts to revive her, she was pronounced dead in the emergency room.

Neveah had lived with her biological mother for the first two years of her life, before her mother surrendered custody to Rivera, the child’s maternal grandmother. Neveah’s mother had also surrendered custody to Rivera of her two older children – 8-year-old R.R. and 5-year-old C.P. – when they were born. The three children and Rivera lived in Florida for a time before they moved to Georgia, where they initially lived in a hotel before moving to an apartment in DeKalb County.

Following Neveah’s death, the medical examiner who autopsied the child determined she had “died as a result of being beaten repeatedly over a period of time.” She had numerous scratches in a distinctive fingernail shape on her face and neck. Her mouth had been hit or held shut so often that the soft tissue between the lips and gums was severely damaged to the point of becoming scar tissue. She had bruising inside her left arm, lower back, and buttocks. She had two parallel, closely-spaced blunt-force injuries on the back of her head that were weeks old and had begun healing at the time she died. All of these injuries were at various stages of healing indicating they had occurred over time. The force necessary to inflict these injuries had to have been at or near adult-level strength. The medical examiner concluded that Neveah ultimately died from multiple blunt force injuries to her head, torso, and extremities, as the internal bleeding from the various injuries, combined with dehydration, caused her to go into cardiac arrest.

Neveah’s siblings initially gave statements that generally mirrored what Rivera had said, although there were inconsistencies and signs of coaching. The two siblings were placed in foster care. R.R. and C.P. told the foster mother the same story about their sister’s death, namely that they were downstairs eating supper while their grandmother was upstairs reading the Bible with Neveah. But several weeks after the little girl’s death, R.R. told the foster mother that what she had initially told her was not true and that “my grandmother killed my sister.” R.R. told her foster mother that Rivera would beat Neveah and C.P. with a pole. The child said she couldn’t understand why her grandmother didn’t like Neveah and C.P. She also said that sometimes Rivera would threaten to smother Neveah and C.P, even placing a pillow over their faces before eventually letting up. The foster mother reported this to the Department of Family and Children Services.

In a second forensic interview, R.R. said Rivera had regularly beat her siblings and while living at the hotel, had made Neveah and C.P. stand naked all night in front of an air conditioner. She said that on Aug. 9, 2012, when Neveah had to be taken to the hospital, it was because her grandmother had pushed the child in the shower, causing her to fall and hit her head. Although the Department of Family and Children Services was called, the child welfare department did not remove the children from Rivera.

R.R. told the interviewer that the night of the murder, Neveah had urinated on herself, and Rivera took her upstairs, put her in the bathroom and hit her in the back with a pole. She then put Neveah in a closet for 5-to-10 minutes. After Rivera picked up Neveah from the closet, R.R. said she looked “like she was going to die.” That was when Rivera called 911.

Rivera was arrested on Sept. 6, 2012. Following a September 2015 trial, the jury found Rivera guilty of malice murder, felony murder, and aggravated assault, and she was sentenced to life in prison. In her appeal to the Georgia Supreme Court, she argued that the evidence was insufficient to support the verdict. But in today’s opinion, the high court disagrees.

“This evidence was sufficient to enable the jury to find Rivera guilty of the crimes for which she was convicted beyond a reasonable doubt,” **Chief Justice Harold D. Melton** writes for the Court. Rivera contended that statements made by R.R. and C.P. during the forensic interviews were designed to elicit false testimony against her. “Rivera’s arguments challenge the weight and credibility of the evidence,” the opinion says. Furthermore, “[i]ssues of witness credibility and the existence of justification are for the jury to determine.” And here, “the jury rejected Rivera’s arguments.”

**Attorney for Appellant (Rivera):**

**Attorneys for Appellee (State):** Sherry Boston, District Attorney, Gerald Mason, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

\*\*\*\*\*

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

- \* Harold Lafaughn Bishop (Chattooga Co.) **BISHOP V. THE STATE (S18A0979)**
- \* Jerome Foster (Fulton Co.) **FOSTER V. THE STATE (S18A1494)**

- \* Patrick Hinton (DeKalb Co.)
- \* Martez Johnson (DeKalb Co.)

**HINTON V. THE STATE (S18A0804)**  
**JOHNSON V. THE STATE (S18A0805)**

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

- \* Anthony Eugene Cheatham **IN THE MATTER OF: ANTHONY EUGENE CHEATHAM (S19Y0155)**

- \* Richard Allen Hunt **IN THE MATTER OF: RICHARD ALLEN HUNT (S19Y0099)**

The Court has **rejected as “insufficient”** a petition for voluntary discipline by public reprimand of attorney:

- \* Denise F. Hemmann **IN THE MATTER OF: DENISE F. HEMMANN (S19Y0032)**

The Court has **rejected as “insufficient”** a petition for voluntary discipline by a State Disciplinary Review Board Reprimand of attorney:

- \* William L. Kirby, III **IN THE MATTER OF: WILLIAM L. KIRBY, III (S18Y1513)**