



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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THE STATE V. ROSENBAUM ET AL. (S18A1090)

The Supreme Court of Georgia has ruled against State prosecutors and decided that when the murder case against the foster parents of 2-year-old Laila Daniel goes to trial, evidence from the couple's iPhones and other electronic devices must be suppressed.

At issue in this highly-publicized child death is whether the delay between the seizure and search of the devices belonging to **Jennifer and Joseph Rosenbaum** violated their Fourth Amendment rights against "unreasonable searches and seizures."

A **Henry County** trial judge determined that it did violate their rights and ruled to suppress the evidence when the case goes before a jury. The judge relied on a ruling by the United States Court of Appeals for the Eleventh Circuit in finding that the 1 ½ year delay between the seizure of the devices and the issuance of search warrants for the data contained in them was "unreasonable" and violated the Rosenbaums' Fourth Amendment rights. The State appealed the trial court's ruling.

But in today's opinion, "We conclude that the analysis developed by the Eleventh Circuit is appropriate, the trial court's findings of fact are supported by the record, and the trial court did not err in granting the motion to suppress," **Justice Michael P. Boggs** writes for a unanimous court. "We therefore affirm the judgment of the trial court."

On Nov. 17, 2015, 2-year-old Laila Daniel died while in the care of the Rosenbaums. On Dec. 4, 2015, a Henry County magistrate judge issued warrants for the arrest of the Rosenbaums for the beating death of Laila and the physical abuse of her 4-year-old sister. The children were foster care placements with the Rosenbaums, who ultimately were charged in a 49-count indictment with malice murder, felony murder, cruelty to children, and aggravated assault. At the

time, Jennifer Rosenbaum was a third-year Emory law student and candidate for the Henry County Commission; Joseph Rosenbaum was a correctional officer at Spalding County Correctional Institute. The night of Nov. 17, 2015, Jennifer had called 911 and reported a child was choking at their McDonough home. When police and emergency medical technicians arrived, she told them that while having dinner, Laila had begun choking on a piece of chicken. The EMTs noticed bruising on the toddler's body, as did medical personnel who later treated her at Piedmont Henry Hospital, where Laila died. The official cause of death was blunt force injury to her abdomen, which transected her pancreas. She had suffered other injuries, including a broken leg, prior to the injuries that caused her death. Further examination of Laila's sister also uncovered significant injuries to her body consistent with inflicted trauma and child abuse.

The night of the Rosenbaums' arrest during a traffic stop, police seized their iPad and MacBook computer from their vehicle. The Sergeant in charge of the investigation instructed his detectives to go to the jail and also retrieve their cell phones. The iPad, MacBook and iPhones were subsequently placed in "property and evidence" at the Henry County Police Department for safekeeping, but according to the State, officers never communicated this to the lead detective.

In January 2017, the newly elected District Attorney of Henry County recused himself from the case, and the District Attorneys of Cobb County and DeKalb County were appointed as the new prosecutors. On May 26, 2017 – approximately 539 days after the Rosenbaums were arrested – prosecutors obtained search warrants for the Rosenbaums' iPhones, iPad and MacBook after the Rosenbaums' attorney asked prosecutors if they could get their electronic devices returned. According to the State, it was the first time the prosecutors or lead detective had been made aware of the existence of the devices, and it was the first time anyone had asked for their return. According to the Rosenbaums' attorney, however, the couple had "repeatedly sought the return of their electronic devices" since their arrest, including at nearly every court appearance.

In January 2018, the Rosenbaums filed a motion seeking to suppress evidence recovered from their electronic devices. According to the State, the devices contained incriminating evidence, including conversations between the couple about the children's injuries during their care, as well as with third parties. In February 2018, the Henry County judge granted the motion to suppress. The State, represented by the Cobb and DeKalb District Attorneys, then appealed to the state Supreme Court prior to the trial.

In today's 26-page opinion, the high court acknowledges that "no Georgia authority addresses the question raised in this appeal." However, "the Eleventh Circuit has established a substantial body of law on this issue, issuing more opinions on the question of unreasonable delay than any other federal circuit cited by the parties or the trial court." Although these decisions are not binding, "We agree with the trial court that the analytical framework established by the Eleventh Circuit is reasonable, comprehensive, and thorough, and we adopt it for the analysis of this issue."

In its 2012 decision in *United States v. Laist*, as well as others, the Eleventh Circuit has identified four facts as relevant to the issue in this appeal: the significance of the interference with the person's possessory interest; the duration of the delay; whether or not the person consented to the seizure; and the government's legitimate interest in holding the property as evidence. In this case, the trial court balanced all these factors before concluding: "There was a significant interference with Defendants' possessory interests in their property over the course of

the 539-day delay it took for the State to begin to examine it. This delay did not result from the complexities of the case nor any overriding circumstances, but from oversights that caused the State not to pursue their investigation into the contents of the devices with sufficient diligence. While the State’s interest in holding Defendants’ property as evidence is very high, this Court finds that there was an unreasonable delay between the seizure of their property and the issuance of search warrants and that this delay violated Defendants’ Fourth Amendment rights.”

“Here, the totality of the circumstances confirms the [trial] court’s well-reasoned conclusion,” today’s opinion says, borrowing from the *Laist* decision.

Attorneys for Appellant (State): Sherry Boston, DeKalb District Attorney, D. Victor Reynolds, Cobb D.A., Anna Cross, DeKalb Dep. Chief D.A., Daysha Young, DeKalb Dep. Chief D.A., Charles Boring, Cobb Dep. Chief D.A.

Attorney for Appellees (Rosenbaums): Corinne Mull

TYNER V. MATTA-TRONCOSO ET AL. (S18G0364)

The Supreme Court of Georgia has ruled in favor of a landlord in this dog attack case, finding he could not be held liable for the injuries of a woman who was two blocks away when his renters’ pit bulls escaped a fenced-in yard and mauled her.

With today’s unanimous opinion, written by **Justice Sarah H. Warren**, the high court has reversed a Georgia Court of Appeals ruling that the case against the landlord could proceed to jury trial.

According to the facts of the case, **Gregory B. Tyner** owned a house with a fenced-in back yard in Stockbridge, **Henry County**. In December 2008, Michael and Lakeisha Thornton began renting the property. The Thorntons had a Labrador retriever, and the lease allowed pets. A few months after the Thorntons moved in, a pest control or lawn-care service provider broke the latch to the front gate of the fence. The parties disagree about whether the Thorntons ever notified Tyner about the broken latch, but Tyner never repaired it or had it repaired. In the meantime, Thornton began securing the front gate by tightly tying a dog leash around the top posts of the gate and the abutting part of the fence and by placing weights and a cement block at the base of the gate to stop it from swinging open. Nevertheless, a few years after the Thorntons had been living in the leased home, their Labrador retriever escaped from the back yard and was fatally struck by a car. The Thorntons then two pit bull dogs. Like their previous dog, they kept the dogs in the back yard during the day. For the next two years, neither of the dogs ever displayed any aggressive behavior.

The afternoon of Oct. 24, 2013, **Maria Matta-Troncoso**, who lived several blocks from the Thorntons, was walking her two small dogs in the neighborhood when the Thorntons’ dogs, which had escaped from the yard, raced toward her and began attacking her dogs. One of her dogs fled, but in trying to shield her other dog, Matta-Troncoso picked it up at which time both pit bulls knocked her to the ground and began mauling her. A neighbor quickly called police who arrived within moments. An officer attempted to stop the attack by kicking the dogs. When they didn’t stop, he fatally shot both dogs. He and another officer attempted to render first aid, but Matta-Troncoso’s injuries were severe enough that she had to be airlifted by helicopter to Atlanta Medical Center where she remained hospitalized for seven days. Matta-Troncoso suffered facial disfigurement and underwent several surgeries, claiming her medical bills came to more than \$140,000.

Initially, Matta-Troncoso and her husband sued only the Thorntons as the dogs' owners, asserting they were liable for Matta-Troncoso's injuries for failing to properly secure the dogs and allowing them to run at large in violation of city and county ordinances. They later amended their complaint with a separate claim against Tyner, who rented the leased premises to the Thorntons. The Mattas alleged that Tyner breached his duty to keep the leased premises in good repair so that the gate latch worked, and that his negligence was the cause of Matta-Troncoso's injuries. Tyner responded to the suit by filing a motion with the Henry County State Court, requesting "summary judgment" in his favor. (A judge grants summary judgment after deciding a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) Tyner argued that the plaintiffs, the Mattas, failed to present any evidence showing that Tyner's failure to repair the gate latch was the "proximate" cause of Matta-Troncoso's injuries. The trial court ruled in Tyner's favor, finding that while Tyner breached a duty to keep the premises in good repair, he deserved summary judgment because the Mattas presented no facts showing that the dogs had ever displayed a propensity to being violent or that Tyner knew of such a propensity.

On appeal, however, the Court of Appeals reversed the ruling, finding that proximate cause is a question for a jury to decide, and that under Georgia Code § 51-2-7, because the dogs were roaming about unleashed in violation of a local ordinance, the Mattas were not required to produce evidence that Tyner was aware of the dogs' "vicious propensities." The intermediate appellate court also concluded that Tyner could be liable under Georgia Code § 44-7-14 because that statute does not limit a landlord's liability to injuries occurring on the leased premises and there is an issue of fact regarding whether Matta-Troncoso's injuries "arose from" Tyner's failure to repair the gate latch. Tyner then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the appellate court erred in reversing the trial court's grant of summary judgment to Tyner.

"We answer that question in the affirmative, and therefore reverse the Court of Appeals," today's opinion says.

"As an initial matter, the Court of Appeals erred in its analysis of Tyner's motion for summary judgment because it applied [Georgia Code] § 51-2-7 to Tyner," the opinion says. "By its plain terms, § 51-2-7 applies only to a 'person who *owns or keeps* a vicious or dangerous animal.' Because there is no contention (let alone evidence) that Tyner, as an out-of-possession landlord, either owned or kept the dogs at issue here," the statute does not apply in the case against him. That error was significant, the opinion says, because the Court of Appeals relied on § 51-2-7 to bypass the Mattas' burden "to show that Tyner was aware of the dogs' temperament or propensity to do harm."

As to the Court of Appeals' conclusion that Tyner could be held liable under Georgia Code § 44-7-14 as a result of his failure to repair the gate latch, "We disagree," today's opinion says. "Looking at § 44-7-14 and the record before us, we conclude that there was no genuine issue of material fact as to Tyner's liability because there is no evidence that Tyner was aware that the Thorntons' dogs had any harmful tendencies or propensities, and it therefore was not reasonably foreseeable that Matta-Troncoso's injuries could 'arise from' Tyner's failure to repair the broken gate latch."

Plaintiffs who seek to hold out-of-possession landlords liable under § 44-7-14 for injuries caused by their tenants' dogs "must therefore present some evidence showing that the landlord

had knowledge of the dogs' tendencies or propensities to do harm in order to demonstrate reasonable foreseeability," the opinion says. That means that here, without some evidence rebutting the presumptive harmlessness of the Thorntons' dogs, the Mattas cannot establish that it was reasonably foreseeable that Matta-Troncoso's injuries would arise from Tyner's failure to repair the gate latch."

"There being no genuine issue of material fact as to whether Tyner's failure to repair the gate latch caused Matta-Troncoso's injuries, summary judgment in Tyner's favor was appropriate," the opinion concludes. "The Court of Appeals' opinion reversing the trial court's grant of summary judgment for Tyner is therefore reversed."

Attorneys for Appellant (Tyner): Michael Kendall, Kimberly Mowbray

Attorneys for Appellees (Matta-Troncoso): Bruce Millar, James Sullivan

FIRST ACCEPTANCE INSURANCE COMPANY V. HUGHES ET AL. (S18G0517)

The Supreme Court of Georgia has ruled in favor of an insurance company in a lawsuit stemming from a multiple-vehicle collision in which the man who caused it was killed and a number of people were injured, including a child who was left brain damaged.

With today's opinion, the high court has reversed a ruling by the Georgia Court of Appeals that would have allowed the lawsuit to go forward.

On Aug. 29, 2008, Ronald Jackson caused a chain-reaction, multiple-vehicle collision that resulted in his death and injured five others, including Julie An and her 2-year-old daughter, Jina Hong, who sustained a traumatic brain injury. At the time of the wreck, Jackson was insured by **First Acceptance Insurance Company** of Georgia, Inc. under a policy that had liability limits of \$25,000 per person and \$50,000 per accident. In January 2009, the attorney for First Acceptance sent a letter to the attorneys representing all the injured parties, including An's attorney, seeking to schedule a settlement conference with all the parties. On June 2, 2009, An's and Hong's attorney faxed two letters to the insurance company's attorney with the first letter expressing his clients' interest in having their claims resolved within Jackson's policy limits and in attending a settlement conference. The second letter requested that First Acceptance provide insurance information within 30 days and stated that, "Any settlement will be conditioned upon receipt of all the requested insurance information." After 41 days passed with no response, An's and Hong's attorney informed the insurance company's lawyer that the June 2nd offer to settle had been withdrawn, and he filed a personal injury lawsuit in **DeKalb County** State Court against Jackson's estate. First Acceptance's attorney later testified that he had received and reviewed the June 2 letters and did not construe them as "any kind of time limit demand." He said that subsequently the letters were inadvertently filed with some medical records. In February 2010, First Acceptance offered to settle Hong's claims for \$25,000, but An's and Hong's attorney rejected the offer. First Acceptance later offered to settle both An's and Hong's claims for \$50,000, but their attorney rejected that offer as well. In July 2012, the lawsuit proceeded to a jury trial, which resulted in an award of \$5.3 million for Hong's injuries.

In June 2014, **Robert W. Hughes, Jr.**, administrator of Jackson's estate, sued First Acceptance Insurance Company, claiming that the insurance company had negligently or in bad faith failed to settle Hong's insurance claim. Hughes sought to recover the \$5.3 million, the amount of the judgment attributable to Hong's injuries which remained unpaid, as well as punitive damages and attorney fees. The trial court ruled in the insurance company's favor,

granting “summary judgment” to First Acceptance in response to all of Hughes’s claims. (A judge grants summary judgment upon deciding a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) On appeal, however, the Georgia Court of Appeals reversed the ruling, finding that the June 2 letters created genuine issues of fact a jury should decide as to whether An’s and Hong’s attorney offered to settle Hong’s claims within Jackson’s policy limits and whether the offer included a 30-day deadline for acceptance of the offer to settle. Further, the intermediate appellate court ruled that the record established “genuine issues of material fact as to whether First Acceptance acted reasonably in responding to any such offer.” The insurance company then appealed to the Georgia Supreme Court, which agreed to review the case to answer two questions: Did the Court of Appeals err in reversing the judgment to the insurance company on the basis that questions of fact existed regarding whether the injured party offered to settle her claims within the policy limits? And does an insurance company’s duty to settle arise when it knows settlement within its insured person’s policy limits is possible, or only when the injured party presents a valid offer to settle?

In today’s opinion, “we conclude that an insurer’s duty to settle arises only when the injured party presents a valid offer to settle within the insured’s policy limits,” **Justice John J. Ellington** writes for a unanimous court. Furthermore, “we conclude that the injured parties presented to the insurer a valid offer to settle within the insured’s policy limits but that the offer did not include any deadline for accepting the offer.”

In its 17-page opinion, the Court disagrees with Hughes that First Acceptance “failed to respond to the offer within the 30-day deadline.”

“We conclude that, through the June 2 letters, An and Hong offered to settle their claims within the insured’s available policy limits and to release the insured from further liability...but that the offer did not include a 30-day deadline for acceptance,” the opinion says. “First Acceptance’s failure to promptly accept An’s and Hong’s offer was reasonable as an ordinarily prudent insurer could not be expected to anticipate that, having specified no deadline for the acceptance of their offer, An and Hong would abruptly withdraw their offer and refuse to participate in the settlement conference. First Acceptance was entitled to summary judgment in its favor, and the Court of Appeals erred when it reversed the trial court’s grant of that motion.”

Attorneys for Appellant (First Acceptance): J. Stephen Berry, Robin Johnson, Kyle Wallace, Cari Dawson, Andrew Tuck

Attorneys for Appellee (Hughes): Brandon Cathey, Brent Steinberg

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

- * Michael Blaine (DeKalb Co.)
- * Nicholas Brooks (HoustonCo.)
- * Jerome Coast (Chatham Co.)
- * Angelo Dennard (DeKalb Co.)
- * Brisean Esprit (Fulton Co.)
- * Mark Alex Jones (Fulton Co.)

- BLAINE V. THE STATE (S19A0430)**
- BROOKS V. THE STATE (S18A1282)**
- CHATHAM V. THE STATE (S19A0180)**
- DENNARD V. THE STATE (S18A1321)**
- ESPRIT V. THE STATE (S18A1074) ***
- JONES V. THE STATE (S18A1075) ***

- * Akeem Saad Johnson (Chatham Co.) **JOHNSON V. THE STATE (S18A1562)**
- * Demario Ware (Fulton Co.) **WARE V. THE STATE (S18A1295)**
- * Reco DeHaven West (Gwinnett Co.) **WEST V. THE STATE (S18A1467)**
- * Deondray D. Yarn (Houston Co.) **YARN V. THE STATE (S18A1052)**

* Co-defendants

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

- * Neil Larson **IN THE MATTER OF: NEIL LARSON**
(S19Y0337, S19Y0338, S19Y0339, S19Y0340)

The Court has ordered the State Disciplinary Review Board to issue a **Review Panel reprimand** in writing to attorney:

- * Donald Edward Smart **IN THE MATTER OF: DONALD EDWARD SMART**
(S18Y0511)