



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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THE STATE V. NEWMAN (S19A0374)

Under an opinion today by the Supreme Court of Georgia, a man convicted of murder will not be getting the new trial a **Chatham County** court had granted him.

In today's opinion, written by **Chief Justice Harold D. Melton**, the high court has reversed the trial court's ruling granting a new trial to **David Miller Newman** and is sending the case back for further proceedings on any claims that were not addressed in the trial court's order.

According to the evidence at trial, Newman, a convicted felon, worked as a supervisor at a company called Salt Creek Couriers ("Salt Creek"). On the morning of June 16, 2016, one of the employees of Salt Creek, Jason Wood, failed to report for work, and Newman went to Wood's home in Savannah, GA and fired Wood from his job as a courier. Newman took the keys to the company van from Wood and planned to return later to retrieve the van. Although Newman did not have any violent confrontation with Wood at that time, he nevertheless decided to get a handgun before returning to Wood's house based on what he later said was "a gut instinct." Newman returned to get the van around 6:30 p.m. that night with Carolee Pritchard, one of Salt Creek's owners.

Wood's girlfriend, Candace Shadowens, was with Wood at his home when Newman arrived. When she went outside where Wood was, he told her to call police because Newman had pulled a gun on him. As Shadowens called 911, Newman threatened her, saying, "I'll kill that b**ch." As Wood attempted to push Shadowens out of the way, Newman then reached over the door of the company van and shot Wood in the chest from one to two feet away. Although a small amount of blood was later found on part of the inside door frame of the van, almost all of Wood's blood was located on the outside of the van, which indicated, according to the State's

forensic pathologist, that Wood was not inside the van, but outside of it, when he was shot. A neighbor of Wood's who was a registered nurse attempted to render aid to Wood at the scene, but Wood died from his gunshot wound. When officers arrived, Shadowens told them Newman had shot Wood.

While fleeing the scene in the company van, Newman threw his handgun out the window and called 911. The gun was later recovered by police. During the 911 call, Newman claimed that Wood had had a gun and shot at him. The police pulled Newman over while he was still on the phone with 911, and he then informed police that he did not know what had happened and that he had just heard a gunshot and driven away. When Newman was later interviewed by police, he changed his story, claiming that neither he nor Wood had a gun, and that when he heard a loud boom he thought that a neighbor had shot a gun. Newman was arrested, and when he was interviewed a second time by police, he changed his story again, now admitting that he had a gun, but claiming that the gun accidentally went off when Wood attacked him.

On Sept. 14, 2016, Newman was charged with malice murder, felony murder, and a number of other crimes, including possession of a firearm by a convicted felon. After he was indicted, Newman changed his story once more, saying in an interview with the prosecuting attorney that when he arrived at Wood's house with a gun, Wood came out of the house with Shadowens behind him, and that Shadowens was carrying a baseball bat. Newman told the prosecutor that Wood had jumped into the company van while Newman's gun was on his lap, and that as the gun started to fall, Newman grabbed it and it accidentally went off.

Prior to trial, a hearing was held on Newman's possible immunity from prosecution. At that hearing, Newman provided another version of events. This time, he stated that when he went to get the van, Wood began arguing with him about money. Newman said that Shadowens opened the door of the van, and Wood charged inside. Newman said that he then grabbed his gun as it was falling, and the gun accidentally went off.

Newman testified in his own defense and changed his story yet again from the previous versions he had told. This time, he claimed that he had gotten the pistol from his sister and that when Wood started to get into the van to rob him, the gun had slipped from Newman's lap and fired.

Following the April 2017 trial, the jury found Newman guilty of felony murder, aggravated assault, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. He was sentenced to life in prison without parole plus 10 years.

Newman filed a motion for new trial, and following a hearing, the trial court granted it, finding that Newman's trial attorney had rendered "ineffective assistance of counsel" in violation of his constitutional rights for failing to ask the judge to instruct the jury about the law pertaining to "defense of habitation." And the judge had erred by failing to give the jury that instruction on his own, even though Newman's lawyer had not requested it. Georgia Code § 16-3-23 states a person is justified in using lethal force to stop a person's "unlawful entry or attack upon a habitation" if the entry is made in "a violent and tumultuous manner" and the person "reasonably believes that the entry is attempted or made for purpose of assaulting or offering personal violence...." (Under Georgia law, "habitation" includes a "motor vehicle.") The trial judge ruled that although the jury was properly instructed on the laws regarding self-defense and accident, because there was testimony at trial that also supported a defense of habitation charge, there should have been a jury charge on that defense as well, and Newman's trial attorney was

ineffective for failing to request such a charge. The State then appealed the ruling to the Georgia Supreme Court.

In today's decision, the high court finds that "the trial court erred in granting Newman's motion for a new trial." Because the lack of such a charge resulted in no harm to Newman, "we agree with the State that the trial court erred in concluding that the failure to give such a charge warranted the grant of a new trial and in concluding that trial counsel was ineffective for having failed to request one," the opinion says. The record shows that Newman brought a gun with him to Wood's house and the forensic evidence contradicted Newman's claim that the shooting took place inside the van. Most importantly, the opinion says, Newman gave at least seven stories about how the shooting took place – "none of which suggested that he intentionally shot Wood, including his trial testimony in which he told the jury that the shooting was accidental," the opinion says. "Although the jury was not specifically instructed on defense of habitation, the jury was, in fact, instructed on self-defense as well as accident, and the jury rejected all of Newman's conflicting stories and those defenses. In light of the compelling evidence of Newman's guilt, we conclude that the alleged error here did not likely 'affect the outcome of the trial court proceedings.'"

"We therefore reverse the trial court's decision," the opinion says. "However, because the trial court also failed to address Newman's remaining claims in his motion for new trial, we remand this case to the trial court for the resolution of those claims."

Attorneys for Appellant (State): Meg Heap, District Attorney, Matthew Breedon, Asst. D.A.
Attorney for Appellee (Newman): Steven Sparger

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

- * Bennie Lorenzo Bell (Richmond Co.)
- * Jonathan Andrew Hart (White Co.)
- * Norman Koonce (Chatham Co.)
- * Jonah Bernard Lay (Fulton Co.)

BELL V. THE STATE (S19A0174)

HART V. THE STATE (S19A0031)

KOONCE V. THE STATE (S19A0012)

LAY V. THE STATE (S19A0361)

(The Supreme Court has upheld Lay's conviction and prison sentence for the murder of Jason Abram. However, the trial court erred by entering convictions and sentences against Lay on two counts of felony murder for killing one victim. The Supreme Court has therefore voided those convictions and remanded the case for the trial court to enter a conviction and sentence on only one of them.)

- * Johnie Oliver, Jr. (DeKalb Co.)

OLIVER V. THE STATE (S19A0019)

- * Clifton Leandre Outler (Jefferson Co.)

OUTLER V. THE STATE (S19A0158)

(The Supreme Court has upheld Outler's murder conviction for the fatal shooting of Anthony

Holmes. However, the trial court erred by failing to merge the aggravated assault upon Holmes with the murder. “Merger generally is required when there is no deliberate interval between the non-fatal injury that forms the basis for aggravated assault (here, the shooting) and the fatal injury that forms the basis for the murder (here, the beating). In this case, there was no evidence at all of a deliberate interval between the shooting and the beating. Accordingly, the conviction and sentence for aggravated assault with a firearm must be vacated.” The high court has also vacated two of three counts of possession of a firearm during the commission of a felony as “the murder, armed robbery, and aggravated assault were all part of one continuous crime spree involving a single victim.”)

- * Michael I. Parks (DeKalb Co.)
- * Briones Ladon Wofford (Floyd Co.)

PARKS V. THE STATE (S19A0243)

WOFFORD V. THE STATE (S19A0129)

(Wofford was convicted of murder and other crimes for the fatal shooting of Jimmie Sellers and the wounding of Mardell Blackburn. The Supreme Court has upheld the murder conviction and life prison sentence without the possibility of parole that Wofford received for killing Sellers. However, the trial court erred when it failed to merge an aggravated assault count with an aggravated battery count, both of which were based on the single gunshot that struck Blackburn in the head. Therefore, the Supreme Court has vacated the conviction and sentence for aggravated assault.)

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for voluntary discipline and, pending resolution of criminal charges, ordered the **suspension until further order of the Court** of attorney:

- * Don Smart

IN THE MATTER OF: DON SMART (S19Y0980)

The Court has accepted a petition for voluntary discipline and ordered a **Review Panel Reprimand** of attorney:

- * Lakeisha Tennille Gantt

IN THE MATTER OF: LAKEISHA TENNILLE GANTT (S19Y0645)