



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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IN THE INTEREST OF M.F., A CHILD (S18G1338)

The Supreme Court of Georgia has ruled in favor of a teenager who sought to appeal a juvenile court order finding him delinquent for attempting to break into an automobile. He was sentenced to 12 months on probation.

With today's ruling, the high court has reversed a decision by the Georgia Court of Appeals, the state's intermediate appellate court, which dismissed the boy's appeal as moot because he had already completed his probation.

In today's unanimous opinion, "we reverse the order of the Court of Appeals and remand the case for further proceedings," **Justice Charles Bethel** writes for the court.

The juvenile court of **Richmond County** first heard the case on May 11, 2017. Following a hearing, **M.F.**, who was 15 years old at the time, was "adjudicated" – or found delinquent – of the criminal act of attempting to enter an automobile with the intent to commit theft. The juvenile court ordered him to serve 12 months on probation. Through an attorney, M.F. attempted to appeal the delinquency adjudication and the "disposition" of probation to the Georgia Court of Appeals, arguing that the evidence against him was insufficient to prove his guilt. In the meantime, M.F.'s probation expired on May 11, 2018. On May 22, 2018, the Court of Appeals dismissed M.F.'s appeal as moot "in view of the fact that, as of the date of this order, the Appellant's [i.e. M.F.'s] twelve-month probationary sentence has expired." The appellate court stated in its order that it declined to reach the merits of his appeal "because the defendant has not shown, on this record, any adverse collateral consequences arising from the juvenile court's adjudication of him as delinquent." M.F. then appealed the dismissal of his appeal to the

Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in dismissing his appeal as moot.

In today's opinion, the high court concludes that the Court of Appeals was wrong. "When the remedy sought in litigation no longer benefits the party seeking it, the case is moot and must be dismissed," the opinion quotes a Georgia Court of Appeals 2016 ruling. "However, we have recognized circumstances where cases that may appear to be moot are nonetheless viable due to the particular nature of the litigated issue," today's opinion says. "Specifically, in the criminal context, apparent mootness can be defeated where 'adverse collateral consequences continue to plague the affected party.' Where a party challenges the legality of his conviction after his sentence has expired, collateral consequences are presumed if the party was convicted of a felony. On the other hand, a party convicted of a misdemeanor is required to demonstrate, in the record, adverse collateral consequences that have continued beyond the expiration of his sentence to show that his case is not moot."

Under the law, an adjudication of delinquency is not a criminal conviction. But in this case, the State urges the Supreme Court to treat such adjudications as misdemeanor convictions and require any juvenile appealing his adjudication to demonstrate collateral consequences. However, simply because an adjudicated juvenile may be able to vote, serve on a jury, own a gun, or say that he has not been convicted of a crime "does not negate the fact that significant adverse collateral consequences inherently and unquestionably can flow from the adjudication," today's opinion says. The adjudication can affect a juvenile in later juvenile or criminal proceedings. "For instance, juvenile courts are permitted to consider prior delinquency adjudications during sentencing," the opinion says. And federal sentencing guidelines "treat prior juvenile adjudications as aggravating factors for calculating a defendant's sentence in federal court." Furthermore, juvenile records "are available to various parties for a wide range of purposes."

"Clearly, the consequences of a juvenile's adjudication of delinquency continue to reverberate even after the expiration of his disposition," the opinion says. "Accordingly, we hold that a juvenile who appeals his adjudication of delinquency is not required to show adverse collateral consequences in the record; such consequences will be presumed."

As a result, "the Court of Appeals erred," the opinion concludes, "and we reverse its order and remand this case for consideration on the merits."

Attorneys for Appellant (M.F.): Gregory Gelpi, Katherine Mason

Attorneys for Appellee (State): Natalie Paine, District Attorney, Joshua Smith, Asst. D.A.

GEORGIA DEPARTMENT OF LABOR V. MCCONNELL ET AL. (S18G1316)

MCCONNELL ET AL. V. GEORGIA DEPARTMENT OF LABOR (S18G1317)

The Supreme Court of Georgia has upheld the dismissal of a man's proposed class action lawsuit against the **Georgia Department of Labor** for inadvertently releasing his and others' personal identifying information.

With today's unanimous decision, written by **Justice Michael P. Boggs**, the high court has affirmed a decision by the Georgia Court of Appeals that the man's complaint failed to "state a claim" for which relief could be granted under Georgia statutory law. This is the second time the case has come to this Court.

According to the facts of the case, in September 2012, the state Department of Labor created a spreadsheet containing the names, Social Security numbers, ages, home phone numbers, and email addresses of 4,757 individuals over the age of 55 who lived in **Fulton, Cobb, and Cherokee counties**. Among them was **Thomas McConnell**. All were people who had applied for unemployment benefits or other Department of Labor services. In 2013, a Department employee attached the spreadsheet to an e-mail he meant to send to a co-worker but instead sent to about 1,000 other people. McConnell, whose information was on the spreadsheet, was so concerned about identity theft that he enrolled in an identity protection service for \$19 a month.

In January 2014, McConnell filed a lawsuit against the Department on behalf of himself and a proposed class of all the others listed in the spreadsheet, claiming negligence, breach of fiduciary duty, and invasion of privacy. McConnell sought to get back the amount he was paying for the identify protection service, damages resulting from the impact to his credit score from the closing of accounts, and compensation for the continuing fear and anxiety of potential identity theft in the future. Others whose information had been disclosed also incurred out-of-pocket costs related to credit monitoring and identity protection services and suffered adverse impacts to their credit scores related to the closure of their credit accounts, as well as anxiety over possible identity theft.

The Department of Labor filed a motion asking the court to dismiss the lawsuit because McConnell failed to state a claim. In October 2015, the Cobb County Superior Court granted the Department's motion and dismissed the case, ruling that "sovereign immunity" barred the claims in the lawsuit. (Sovereign immunity is the legal doctrine that protects the government and its departments from being sued without the government's consent.) Specifically, the trial court ruled that the Georgia Tort Claims Act (Georgia Code §50-21-20 et seq.) did not waive the State's immunity for the type of "loss" that McConnell claimed. In addition, the trial court held that each count of the complaint failed to state a claim.

McConnell appealed to the Georgia Court of Appeals, which upheld the lower court's ruling, but it only addressed the issue of failure to state a claim. The appellate court noted that to have a viable negligence claim, a plaintiff must show that the defendant has a legal duty to conform to a standard of conduct prescribed by law for the protection of others against risk of harm. The appellate court pointed out that the standard can be imposed by a statute or by a common law principle but to date, Georgia case law has not recognized a duty to protect personal identifying information. (Case law is based on judicial opinions as opposed to law based on statutes.) "The trial court correctly concluded that McConnell's complaint is premised on a duty of care to safeguard personal information that has no source in Georgia statutory law or case law and that his complaint therefore failed to state a claim of negligence," the Court of Appeals opinion said. McConnell then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in considering the merits of McConnell's claims without deciding first whether sovereign immunity barred his claims. The high court held that the appellate court did err in this regard and it vacated the Court of Appeals judgment and sent the case back with direction to make this threshold determination. On remand, the Court of Appeals first held that the trial court erred in concluding that sovereign immunity barred McConnell's claims. On the merits, however, the Court of Appeals again ruled that the trial court properly dismissed the lawsuit for failure to state a claim.

Both the Department and McConnell then appealed to the Georgia Supreme Court, which again agreed to review the case to determine: 1) whether the Court of Appeals erred in ruling that the State's sovereign immunity was waived under the Georgia Torts Claims Act; and 2) whether the Court of Appeals erred in ruling that McConnell's complaint failed to state a claim.

"After review, we agree with the Court of Appeals and affirm" its ruling, today's opinion says.

In its arguments, the Department had argued that the definition of "loss" in Georgia Code § 50-21-22 (3) limits the waiver of sovereign immunity to claims in which a plaintiff also has suffered a personal "injury, disease, or death," which this complaint did not allege.

"We disagree," the opinion says.

Georgia Code § 50-21-23 (a) says that the state waives its sovereign immunity for wrongdoing by state employees "while acting within the scope of their...employment," subject to exceptions listed in the Georgia Torts Claims Act. "Thus, absent some express 'exception or limitation set forth in the [Act],' the state waived its sovereign immunity from McConnell's lawsuit," the opinion says. Accordingly, "we agree with the Court of Appeals and conclude that the Georgia Torts Claims Act waived the state's sovereign immunity from McConnell's lawsuit."

As to the merits of McConnell's complaint, "Each count of the complaint failed to state a claim upon which relief could be granted," today's opinion says. "The Court of Appeals therefore properly affirmed the dismissal of the complaint."

Attorneys for Department of Labor/State: Christopher Carr, Attorney General, Kathleen Pacious, Dep. A.G., Loretta Pinkston-Pope, Ellen Cusimano, Asst. A.G.

Attorneys for McConnell et al.: Scott Schweber, Jefferson Allen

COLLETT V. THE STATE (S19A0324)

The Georgia Supreme Court has unanimously upheld the convictions and life-without-parole prison sentence given to **Shane Clifton Collette** for the 2012 murder of 9-year-old Skylar Dials.

According to the facts of this highly publicized case, at the time, Skylar was living with her guardians, Renas and Robert Lupas, in Griffin, GA, **Spalding County**. The morning of Dec. 21, 2012 Skylar left her home on Yarbrough Mill Road to play with her friend, C.P., who lived next door with her mother, brother, grandfather, and her mother's 40-year-old boyfriend, Collett. When Skylar failed to return by 3:00 p.m., Renas Lupas became worried and went over to C.P.'s house. Collett answered the door and said Skylar was not there. C.P. and her mother said Skylar had never come to their house that day. Along with neighbors, the Lupases began an earnest search for Skylar, calling her name, and Collett joined in the search. Failing to find her, they eventually called in law enforcement.

Police interviewed Collett several times that day, and although he consistently denied he had seen Skylar, Collett changed the details of his story. Investigators observed that he expressed no emotion and evaded making eye contact with them. In the early morning hours of Dec. 22, 2012, police found the child's body in a pile of brush behind her home. Her sweater was pulled up near her head. She had scratch marks on her face and bruising or ligature marks on her neck. The medical examiner who conducted the autopsy determined that Skylar died of asphyxiation

due to neck compression. Examiners later determined that fibers on Skylar’s sweater had come from Collett’s bedroom.

After finding Skylar’s body, law enforcement officers returned to question Collett. Initially, he repeated that Skylar had never come to the house that day. But after he was read his rights, Collett changed his story. He said Skylar had come to the house while he was asleep, startling him, and that when he jumped up, he had accidentally knocked her to the floor, rendering her unconscious. He admitted that he had moved her to the brush pile where she was eventually found, but he claimed she was still breathing at the time. Collett was then taken into custody.

In April 2013, a Spalding County grand jury indicted Collett for malice murder, felony murder, aggravated assault, cruelty to children in the first degree, and concealing the death of another. At a January 2015 trial, the jury found him guilty on all counts, and he was sentenced to life in prison with no chance of parole.

In his appeal to the state Supreme Court, Collett challenges the sufficiency of the evidence to convict him of malice murder and concealing the death of another.

“We disagree,” **Justice Nels S.D. Peterson** writes in today’s opinion.

“In cases like this one where convictions are based on circumstantial evidence, the evidence must be ‘consistent with the hypothesis of guilt’ and ‘exclude every other reasonable hypothesis save that of the guilt of the accused.’” Given the facts of this case, “a rational trier of fact could have excluded every other reasonable hypothesis and found beyond a reasonable doubt that Collett murdered Dials and concealed her death,” the opinion says.

Collett also argues the trial court erred by failing to instruct jurors on “mistake of fact,” which is a defense where there is a misapprehension of a fact that would have justified the act, and on the law regarding reckless conduct, which is a “lesser-included” and less serious offense than those with which Collett was charged.

“Although it is error to deny a jury charge that is warranted by the evidence, there is no error in refusing to give a charge that is not,” the opinion says. “The trial court did not err in refusing to instruct the jury as to reckless conduct or mistake of fact as requested because neither charge was supported by the evidence.”

Attorney for Appellant (Collett): Debra Kay Jefferson

Attorneys for Appellee (State): Benjamin Coker, District Attorney, B. Ashton Fallin, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

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

* Cameron Taboris Carter (Crisp Co.)

CARTER V. THE STATE (S19A0440)

* Jehaziel Carter (Fulton Co.)

CARTER V. THE STATE (S19A0409)

(The Supreme Court has upheld Carter’s convictions for murder, armed robbery, aggravated assault and other crimes for the shooting death of

Eric Chepkuto. But it has reversed his conviction for financial-transaction card fraud due to insufficient evidence.)

- * Johnny Ray Cochran (Sumter Co.)
- * Tyrone Lamark Davis (Houston Co.)
- * Shontori N. Gooden (Douglas Co.)
- * Lamaris Grier (DeKalb Co.)
- * Robert Delmar Moss (Hancock Co.)
- * James Ralph Spell (Glynn Co.)

COCHRAN V. THE STATE (S19A0149)

DAVIS V. THE STATE (S19A0419)

GOODEN V. THE STATE (S19A0173)

GRIER V. THE STATE (S19A0634)

MOSS V. THE STATE (S19A0443)

SPELL V. THE STATE (S19A0066)

(The Supreme Court has upheld Spell’s murder convictions for the stabbing death of his ex-wife, Amanda Harrison Spell, and the fatal shooting of her mother, Jeaney Harrison. But it has voided his convictions for aggravated battery and aggravated assault as the trial court erred by failing to merge those counts with one of the murders for sentencing.)

- * Kyle Anthony Strother (Floyd Co.)

STROTHER V. THE STATE (S19A0279)

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for the **voluntary surrender of license** – tantamount to disbarment – from attorney:

- * Richard Scott Thompson **IN THE MATTER OF: RICHARD SCOTT THOMPSON (S19Y1076)**