



Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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THE STATE V. TOWNS (S19A0557)

The Supreme Court of Georgia has ruled against the State and upheld a **Telfair County** court's dismissal of the murder indictment against **Ronnie Adrian Towns** for the 2015 murders of Elrey and June Runion.

In this highly publicized case, Towns was charged with luring the elderly couple to rural Telfair County from their Marietta home under the pretense of selling them a 1966 Mustang that Towns had advertised on Craigslist. The State announced it would seek the death penalty.

At issue in this appeal is whether all the grand jurors who indicted Towns were randomly chosen. The State argued they were. The trial court disagreed. "And so do we," **Justice Keith R. Blackwell** writes in today's 7-to-2 opinion.

According to the record, following Towns's arrest, the Telfair County Superior Court summoned 50 people for possible service on the grand jury, but fewer than 16 reported. Under Georgia Code § 15-12-61 (a), empaneling a grand jury requires a minimum of 16 persons and no more than 23. The trial judge subsequently directed the sheriff to attempt to locate those who failed to appear. The judge also ordered the clerk of the court to supplement the number of prospective grand jurors with persons who had been summoned to appear for service as trial jurors. Under Georgia Code §15-12-66.1, when there is an insufficient number of persons available to empanel a grand jury, "the presiding judge shall order the clerk to *choose at random* from the names of persons summoned as trial jurors a sufficient number of prospective grand jurors necessary to complete the grand jury."

With the help of her chief deputy, the clerk examined the list of 150 persons who had been summoned to appear the following day for possible service as trial jurors. After identifying four possible candidates for service on the grand jury, the clerk reached out to them. Two said they could not report, but the other two – T.S. and B.W. – agreed to report immediately. By the time T.S. and B.W. reported, several of those who had been summoned as prospective grand jurors and initially failed to report appeared, either on their own or at the request of the sheriff.

On March 16, 2015, the trial judge empaneled a grand jury of 23 persons, with 21 having been summoned originally for grand jury service and the other two having been drawn from the trial jury list. T.S. was chosen as the foreperson. The same day, the grand jury heard the evidence in Towns’s case and indicted him on two counts of malice murder, four counts of felony murder, and two counts of armed robbery. Two years later, Towns’s attorney filed a motion to dismiss the indictment, arguing that some of the grand jurors had not been selected randomly.

At a hearing on the motion, the clerk testified that she had based her selections on whether she had the information needed to quickly contact the prospective jurors and whether they likely could report immediately. Following the hearing, the trial judge dismissed the indictment, finding that neither T.S. nor B.W. had been chosen randomly to serve on the grand jury. The judge found that although “the Clerk of Court did not have any nefarious intent in selecting [T.S.] and [B.W.]...to serve on the grand jury, her reasoning of selecting those individuals that she knew, could contact quickly, and who were most likely available to serve did have the effect of destroying the randomness of the grand jury.” The State then appealed to the Georgia Supreme Court.

In today’s majority opinion, the high court has upheld the lower court’s ruling, finding that “the trial court did not err when it dismissed the indictment as a remedy for the violation of the randomness requirement that occurred in this case.”

When used in a strict statistical sense, the word “random” is commonly understood to refer to the results of a selection process “in which each candidate for selection has an equal probability of being chosen,” the majority opinion explains. The statute’s provision that trial jurors must be chosen “at random” for the grand jury “means at the very least that the clerk must employ a selection process that produces choices that are substantially unpredictable and not meaningfully susceptible to the conscious influence of the clerk or other court personnel.” Here, in selecting T.S. and B.W. to serve on the grand jury, “the clerk relied on her personal knowledge of the prospective petit jurors, her own assessment of the extent to which she had the information necessary to contact them, and her estimate of the likelihood that they would be available to report immediately,” the opinion says. “Those selections were not ‘random’ in any sense of the word.”

“A grand jury is randomly selected only to the extent that all of its members were randomly selected,” today’s majority opinion says. “Even an occasional, limited, and well-intentioned violation of the randomness requirement in the statute governing the summoning of additional grand jurors undercuts a key feature of the modern scheme for selecting juries. Especially in light of our prior decisions on this subject, we cannot say that such a violation is anything less than the violation of an ‘essential and substantial’ provision of the jury selection statutes.”

In a dissent, **Justice John J. Ellington** writes that although he agrees that two of the grand jurors who indicted Towns were not chosen “at random,” “I do not believe that the clerk of

court's method in this case for securing grand jurors from the list of persons who had been summoned to appear for service as trial jurors constituted a disregard of the 'essential and substantial' provisions of the new statutory scheme governing jury selection such that it vitiated the array." In 2011, the Georgia General Assembly adopted a new statewide system of jury selection with passage of the Jury Composition Reform Act. "The twin pillars of the new statutory scheme are inclusivity and randomness," the dissent says. However, the "statutory authorization to pull supplemental grand jurors from among those already summoned as trial jurors when necessary to enable the empaneling of a grand jury is not a central component of the overall statutory scheme for securing fairly representative and non-discriminatory grand juries. To the contrary, it is a minor adjunct to the statutory scheme to be used only on an as-needed basis." It is true that the statute requires that when pulling supplemental grand jurors from the randomly generated list of those already summoned as trial jurors, the clerk must do so "at random." But "in my view, this added layer of randomness is not such an 'essential and substantial' component of the new statutory scheme for jury selection that a violation requires the invalidation of every indictment issued by the resulting grand jury," the dissent says. By using "her own educated guesses about who on the randomly generated list of summoned trial jurors was most likely to be able to appear quickly so that a grand jury could be empaneled and get to work," the clerk "substantially complied with the law." "Dismissing the indictment based on this irregularity troubles me," the dissent says. "Dismissal of an indictment is an extreme sanction, 'used only sparingly as [a remedy] for unlawful government conduct.'" "Accordingly, I would reverse the trial court's order quashing the indictment." Justice Michael P. Boggs joins in the dissent.

Attorneys for Appellant (State): Timothy Vaughn, District Attorney, Keely Pitts, Asst. D.A.
Attorneys for Appellee (Towns): Gabrielle Pittman, Nathaniel Studelska, Franklin Hogue, J. Travis Griffin

MOBLEY V. THE STATE (S18G1546)

The Supreme Court of Georgia has reversed a Georgia Court of Appeals decision that upheld the convictions of a man found guilty of vehicular homicide after he collided with a vehicle in **Henry County**, killing its two occupants.

In today's decision, **Justice Keith R. Blackwell** writes that data obtained from the man's "airbag control module" should have been suppressed at trial because officers downloaded it before securing – or even trying to secure – a search warrant.

On Dec. 15, 2014, **Victor Lamont Mobley** collided with another vehicle, killing the driver and passenger. When Henry County police officers arrived at the scene, witnesses told them that Mobley's Dodge Charger had crashed into the victims' Chevrolet Corvette as it pulled from a private driveway onto Flippen Road. The speed limit at the collision scene was 45 miles per hour. Based on the evidence at the scene, officers found no indication that Mobley had been driving too fast prior to the crash. However, a supervisor in the traffic division of the Henry County Police Department directed officers to retrieve data from the "airbag control module" (ACM) in both vehicles. One of the investigators climbed into both cars, attached a "crash data retrieval" device to data ports in the cars, and downloaded data from the ACMs. The investigators had not obtained a search warrant.

The data from Mobley's ACM showed that he actually had been driving at a rate of 97 miles per hour five seconds before airbag deployment. The officers subsequently had the Charger and Corvette towed to an impound lot for further investigation. The next day, officers applied for a warrant to search and seize the ACMs from both vehicles. The application for the search warrant did not inform the magistrate judge that officers had already collected data from the ACMs or rely on the data to establish probable cause for seizure of the ACMs. After obtaining the warrant, officers removed the ACMs from both vehicles at the impound lot, placed the devices into evidence storage, and did not access the ACM data again.

In June 2015, a Henry County grand jury indicted Mobley with two counts of vehicular homicide in the first degree, reckless driving, and speeding. Mobley's attorneys filed a pre-trial motion to exclude the ACM data from evidence as having been the fruit of an unlawful warrantless search under the U.S. Constitution's Fourth Amendment, which protects against "unreasonable searches and seizures." Following a hearing, the trial court denied Mobley's motion to suppress, finding it was unnecessary to decide whether a search warrant was required to access the data from the ACM because police obtained a search warrant the day after the data was accessed, and therefore the data inevitably would have been discovered "when the ACMs were properly removed from the vehicle pursuant to the search warrants." Following a June 6, 2017 bench trial (i.e., before a judge with no jury), Mobley was found guilty on all counts. He was sentenced to 15 years with the first seven to be spent in prison followed by eight years on probation.

Mobley appealed to the Georgia Court of Appeals, which upheld the trial court's ruling. The intermediate appellate court concluded that Mobley "did not have a reasonable expectation of privacy with respect to the data captured by his vehicle's ACM" because members of the public and others could observe his vehicle's movement, his approximate speed, and whether he was wearing a seatbelt. As a result, the Court of Appeals ruled, the retrieval of the data was not a search or seizure protected by the Fourth Amendment. Mobley then appealed to the Georgia Supreme Court, which agreed to review the case to answer a number of questions, including whether the retrieval of data from the ACM was a search and seizure that implicates the Fourth Amendment and, if so, whether the retrieval of the data was an *unreasonable* search and seizure forbidden by the Fourth Amendment.

In today's 42-page opinion, "we conclude that the trial court erred when it denied the motion to suppress. The judgment of the Court of Appeals, therefore, is reversed."

The opinion addresses each question raised by the Supreme Court. "For much of our history, the Fourth Amendment was understood to be concerned only with government trespasses upon the rights of individuals under the common law to be secure in their 'persons, houses, papers, and effects,'" the opinion says. "A personal motor vehicle is plainly among the 'effects' with which the Fourth Amendment – as it historically was understood – is concerned, and a physical intrusion into a personal motor vehicle for the purpose of obtaining information for a law enforcement investigation generally is a search for purposes of the Fourth Amendment under the traditional common law trespass standard."

As to whether the retrieval of data was an unreasonable search and seizure forbidden by the Fourth Amendment, "we conclude that it was," the opinion says. The "constitutional preference for warrants is so strong that searches and seizures without a warrant 'are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and

well-delineated exceptions.” Here, an investigator retrieved the data from an ACM without a warrant, “and the State has failed to identify any recognized exception to the warrant requirement that is applicable to the facts that are established in the record.”

Regarding other issues, the high court has concluded that the “inevitable discovery exception” does not apply in this case. This Court has explained that for the inevitable discovery exception to apply, which would allow the search evidence to be admissible despite no warrant, “there must be a reasonable probability that the evidence in question would have been discovered by lawful means, and the prosecution must demonstrate that the lawful means which made discovery inevitable were possessed by the police and were *being actively pursued prior to the occurrence of the illegal conduct*,” today’s opinion says. “The record in this case, however, does not show that the officers were actively pursuing a search warrant” at the time the investigator retrieved the data without a warrant. And obtaining a warrant the next day “is not enough to bring this case within the inevitable discovery exception,” the opinion says. “There is no evidence that any of the investigating officers applied for a warrant, were preparing an application for a warrant, or even were contemplating a warrant” before the investigator retrieved the data. “To the contrary, the officers in this case testified that the most common practice in such investigations is to retrieve ACM data at the scene of a crash *without* a warrant.”

The trial court should have granted the motion to suppress, the opinion concludes. “The judgment of the Court of Appeals, affirming the decision of the trial court, is reversed.”

Attorneys for Appellant (Mobley): Brandon Bullard, James Bonner, Jr., Margaret Bullard

Attorneys for Appellee (State): Darius Pattillo, District Attorney, Sharon Hopkins, Asst. D.A.

DEKALB COUNTY SCHOOL DISTRICT ET AL. V. GOLD ET AL. (S18G1419)

In an opinion today, the Supreme Court of Georgia has ruled in favor of DeKalb County teachers and school employees who sued the **DeKalb County School District** and Board of Education for breaching an agreement to provide two years’ advance notice prior to suspending contributions to their Tax Shelter Annuity (TSA) plan accounts.

With today’s opinion, written by **Chief Justice Harold D. Melton**, the high court has upheld a decision by the Georgia Court of Appeals, the state’s intermediate appellate court, which concluded that the two-year notice provision had become a part of employees’ contracts.

“Though we disagree with the Court of Appeals’ analysis, we agree with the court’s ultimate conclusion,” the opinion says. “Accordingly, we affirm” the decision.

Until 1979, the DeKalb County School District participated in the Social Security System based on a “§ 418 agreement” with the federal government. That agreement provided Social Security retirement benefits to school district employees. In 1977, the DeKalb County Board of Education notified employees that it was considering withdrawing from the Social Security System in favor of an alternative retirement plan. In May 1979, the Board passed a resolution reaffirming its intent to withdraw from Social Security and establish an alternative plan for its employees. In the resolution, the Board stated it would give a two-year notice to employees before reducing or terminating funding for any alternative plan. Subsequently, the Board pursued an alternative employee benefits plan with a private insurance company. In June 1982, the Board amended its bylaws and policies concerning the Alternative Plan to Social Security, again including “a two-year notice to employees before reducing the funding provisions of the Alternative Plan to Social Security.” In July 1983, the Board voted to establish its own DeKalb

County Tax Sheltered Annuity plan (TSA). The purpose of the TSA plan was “to provide a written standard procedure under which retirement benefits to serve in lieu of Social Security are provided and administered on behalf of Eligible Employees.” The TSA plan stated that, “This Plan may be amended or terminated by the Employer at any time. No amendment or termination of the Plan shall reduce or impair the rights of any Participant or Beneficiary that have already accrued.” In 2003, the Board approved a restatement of the 1983 TSA plan.

In July 2009, during the “Great Recession,” Georgia’s governor announced a 3 percent reduction in state funding for all Georgia school systems. To try to manage the anticipated loss of \$20 million in state funding, the Board voted to temporarily suspend the TSA plan, which would “suspend all legally-allowable contributions [toward the retirement plan] from August 2009-June 2010.” It gave no prior notice to employees before voting to “temporarily suspend” the TSA plan. In June 2010, the Board amended its by-laws and policies to remove the two-year notice provision adopted in 1982.

In March 2011, **Elaine Ann Gold** and three other current or former employees of DeKalb County schools sued the school district and board for breaching the agreement to provide two years’ advance notice prior to reducing funding to their Tax Shelter Annuity (TSA) plan accounts. Following a hearing, the DeKalb County Superior Court ruled in favor of the district and board, finding that the employees had “failed to establish the existence of an enforceable, valid contract that was breached by the School District when it suspended certain contributions to” the TSA plan. The employees appealed to the Court of Appeals, arguing that because the promise to provide two years’ notice “was adopted as Board Policy, it became part of the employees’ employment contracts, protected by Georgia’s prohibition on retroactive laws and impairment of contracts.” They argued that because the notice provision has the force of statutory law, it cannot be amended by the TSA plan documents, which are “subordinate” to it. The Court of Appeals agreed and reversed the trial court’s ruling on the issue of liability, voided the remainder of the court’s order, and sent the case back to the trial court with direction. The Court of Appeals found that because the notice policy was legislatively enacted, it became a substantive part of the employees’ contracts of employment, and the district’s admitted breach of that policy and its attempt to repeal it retroactively violated the Impairment Clause (also called the Contract Clause) of the Georgia Constitution. The school district and school board then appealed to the Georgia Supreme Court.

“The salient issue to be resolved in this case is whether the two-year notice provision in the 1982 Amendment became a part of an employment contract between Appellants [i.e. school district and board] and Appellees [employees],” today’s opinion says.

“Here, the record shows that Appellants offered their employees a retirement benefits plan, and also promised to provide two years’ notice before reducing any of the funding provisions of the benefits plan. In exchange, the employees agreed to begin to work or continue to work for Appellants, and to wait until their retirement to collect these funds. That bargain contemplated the necessary consideration flowing from both parties, thus making the two-year notice provision a part of Appellees’ employment contracts.”

In conclusion, “we agree with the Court of Appeals, albeit for somewhat different reasons, that the trial court erred in granting Appellants’ motion for summary judgment and in denying Appellees’ motion for summary judgment on the issue of liability for breach of contract,” the opinion states.

Attorneys for Appellants (District): Allegra Lawrence, Leslie Bryan, Lisa Haldar, Thomas Bundy, III, Josh Belinfante

Attorneys for Appellees (Gold): Michael Terry, Jason Carter, Naveen Ramachandrappa, Roy Barnes, John Salter

HENRY V. THE STATE (S19A0953)

The Supreme Court of Georgia has reversed the felony murder conviction and life prison sentence given to a young man for the shooting death of a man in **Chatham County** who was following and threatening the young man and his friends.

In today's unanimous opinion, **Justice Michael P. Boggs** writes that the trial court erred by refusing to instruct jurors on the law of justification so they could consider whether the young man had killed the man in self-defense.

According to the evidence at trial, the night of July 10, 2015, **Tyron Henry** and two friends, Nikki Miller and Jamonie Williams, were headed to a neighborhood liquor store in Savannah, hoping to arrive before closing time. Henry and Miller were walking and Williams was riding his bike. As they crossed the intersection at Victory Drive, an unknown car "obnoxiously" honked the horn and began following them "real close," making them feel unsafe. After Williams asked the driver, later identified as Michael Johnson, why he was "following alongside of us," and if he knew them, Johnson abruptly put his car in reverse, almost hitting Henry and Miller. According to Williams, who later testified for the State at trial, Henry and Johnson had some words. Johnson then tried to knock Williams off his bike, using his car and causing Williams to jump the curb. At that point, Johnson reached into his console, leading Williams to believe he was getting a gun. Williams testified Johnson then got out of his car and confronted Henry and Miller "eye to eye." Believing "there may be shooting coming," and his "life was in danger" Williams said he hid behind a truck. At that point, he saw Henry take off his backpack and pull out a pistol. After hearing gunshots, Williams fled.

Miller, however, testified that it was Williams who had had words with Johnson, not Henry. "And I was telling him to be quiet, but he wouldn't listen," she said, as she was trying to defuse the situation. When Miller saw how close Johnson was getting to Williams, she said she asked Henry to go grab Williams, which Henry did while telling her to "keep going." She said she continued to walk, heard gunshots, then ran from the scene. She did not see Williams again, but she and Henry ran to his house. Miller testified that in the middle of the night, she awoke to find Henry shaking and saying he thought he had shot and killed a man. Miller testified that in the past she had seen Henry with a silver pistol, but she had not seen him pull a gun out of his backpack that night.

The medical examiner testified that Johnson had sustained gunshot wounds to his chest and head, either of which could have killed him. The medical examiner also testified that Johnson's alcohol content was .147, and that he had a .25mg/L concentration of cocaine in his system, both of which could have enhanced Johnson's aggressiveness and poor judgment.

At his October 2016 trial, while Miller and Williams testified, Henry did not. In his opening statement, Henry's attorney was candid that the defense was presenting two seemingly inconsistent defenses. One was that Williams had lied to police and actually had been the one who exchanged words with Johnson and then shot him, after which Williams fled, changed clothes, and posted on Facebook that he was trying "to get rid of a .38 with a body on it." The

other defense was self-defense after Johnson, who was drunk and high, repeatedly threatened Henry, Miller, and Williams. “One set of facts, it can be self-defense,” Henry’s attorney said in his opening statement. “Other set of facts, some other dude did it. Doesn’t happen very often. But this is one of those cases where take your pick.” Prior to jurors’ deliberations, the defense attorney asked the judge to instruct them about the law on justification, including instructions on the use of force in defense of self or others and that the State had the burden of proving beyond a reasonable doubt that the defendant was not justified. But the judge refused, relying on the fact that Henry did not testify and concluding that “there was a lack of slight evidence to authorize instructing the jury on justification.” The jury found Henry not guilty of malice murder but guilty of felony murder and possession of a firearm during the commission of a felony. Henry was sentenced to life plus five years in prison. He then appealed to the state Supreme Court.

In today’s opinion, the high court finds that the evidence was sufficient to prove beyond a reasonable doubt that Henry was guilty of the crimes for which he was convicted. However, “In light of this Court’s recent decision in *McClure v. State*, we conclude that the trial court erred in refusing to give the requested instructions on justification by self-defense or the defense of others,” the opinion says.

In *McClure*, decided two weeks ago on Oct. 7, this Court reversed a decision by the Georgia Court of Appeals, which had upheld a trial court’s refusal to instruct the jury on justification in defense of self and justification in defense of habitation, reasoning that to obtain those instructions, the defendant had to admit the elements of aggravated assault as he had been charged. This Court ruled in *McClure* that, “A criminal defendant is not required to ‘admit’ anything, in the sense of acknowledging that any particular facts are true, in order to raise an affirmative defense.”

“We reiterated that, ‘To authorize a requested jury instruction, there need only be slight evidence supporting the theory of the charge,’” today’s opinion says, quoting the Court’s *McClure* decision. “Moreover, the defendant may pursue apparently contradictory defenses ‘so long as some evidence supports each theory.’”

In Henry’s case, “The State presented more than slight evidence to support Henry’s requested jury instructions,” the opinion says. Williams and Miller both testified that Johnson was behaving aggressively and that they feared violence. The evidence showed that Johnson was drunk and high and had reached into his console before getting out of his car to confront Henry and Miller “eye to eye.” “Assuming, for the sake of argument, that Henry was the shooter, only after this escalating series of events did Henry remove a weapon from his backpack and shoot Johnson,” the opinion says. “The testimony of the State’s witnesses established more than the slight evidence necessary to support the requested charges on justification, and we therefore conclude that the trial court erred in refusing to give them.”

As a result, the opinion concludes, Henry “was deprived of significant defenses that he had outlined for the jury in his opening statement. Under these circumstances, we cannot say that it is highly probable that the trial court’s instructional error did not contribute to the verdicts against Henry, and we therefore must reverse Henry’s convictions.”

Attorney for Appellant (Henry): Robert Persse

Attorneys for Appellee (State): Meg Heap, District Attorney, Greg McConnell, Chief Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Katherine Emerson, Asst. A.G.

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

* Leonard Lamont Anderson (Chatham Co.) **ANDERSON V. THE STATE (S19A0682)**

* Frank Don Causey (Putnam Co.) **CAUSEY V. THE STATE (S19A0957)**

* Matthew Leili (Gwinnett Co.) **LEILI V. THE STATE (S19A0541)**

* Sidney Jerome McKinney (Thomas Co.) **MCKINNEY V. THE STATE (S19A0908)**

* Abdullah Mohamed (Telfair Co.) **MOHAMED V. THE STATE (S19A0705)**

* Kenneth N. Powell (Dougherty Co.) **POWELL V. THE STATE (S19A0721)**

* Shanard Smith (Dougherty Co.) **SMITH V. THE STATE (S19A0749)**

(In the same opinion upholding Smith’s murder conviction for the 2010 shooting death of LeSheldon Stanford following a fight in an Albany nightclub, the Supreme Court has reversed the murder convictions received by his co-defendants, Anthony Hawkins (**Hawkins v. The State S19A0750**) and Shuntavious Seay (**Seay v. The State S19A0749**), “because the evidence at trial was insufficient to prove beyond a reasonable doubt that they were parties to the shooting in the parking lot outside the club.” However, the high court has upheld Hawkins’s and Seay’s convictions for aggravated assault, based on their participation in the fight inside the club prior to the shooting.)

* Roderick Thornton (Fulton Co.) **THORNTON V. THE STATE (S19A0755)**