



Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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BUTLER V. THE STATE (S20A0870)

In this **Richmond County** murder case, the Supreme Court of Georgia has vacated and remanded the case of **Patrick Dela Butler**, who was convicted of malice murder and sentenced to life in prison without the possibility of parole for the 2009 shooting death of Darryl Walden.

In today's opinion, **Justice Michael P. Boggs** writes for a unanimous Court that the Richmond County Superior Court judge applied the wrong legal standard in admitting evidence of Walden's 2005 felony conviction for obstructing a law enforcement officer.

"Accordingly, we vacate Appellant's [i.e. Butler's] convictions, and we remand the case to the trial court to apply the correct standard and determine whether the prior felony conviction should have been admitted."

At trial, Butler argued that he shot Walden in self-defense, and he argues in his appeal that the State failed to present sufficient evidence to disprove his claim. In today's opinion, however, the high court finds that the evidence at trial "was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Appellant did not act in self-defense and instead was guilty of malice murder." Butler also was convicted of possession of a firearm during the commission of a felony and possession of a firearm by a convicted felon, for which he was sentenced to another 10 years in prison. Today's opinion says the evidence was sufficient "to conclude beyond a reasonable doubt that Appellant was also guilty of the other crimes for which he was convicted."

However, the Georgia Supreme Court agrees with Butler's attorney, as do State prosecutors, that the trial judge erred by applying the wrong legal standard in deciding to admit evidence of Butler's 2005 conviction for obstructing a law enforcement officer.

Under former Georgia Code § 24-9-84.1 (a) (2), which is part of Georgia's former Evidence Code and applies to this case, "Evidence that the defendant has been convicted of a crime shall be admitted...if the court determines that the probative value of admitting the evidence *substantially* outweighs its prejudicial effect to the defendant." Before admitting the evidence, the statute required the judge "to make an on-the-record finding that the probative value of admitting a prior conviction substantially outweighs its prejudicial effect." Here, however, the "trial court concluded that the probative value of that evidence merely *outweighed* – not that it *substantially outweighed* – its prejudicial effect to Appellant."

Under the correct legal standard, the State contends that the evidence is admissible. But in today's opinion, the high court finds that it is "not apparent that it would have been an abuse of discretion for the trial court to have either admitted or excluded the 2005 felony obstruction conviction under the proper standard." Even if admitting the evidence was error, the State contends that Butler's convictions still should be upheld because it was "harmless" error that did not contribute to the guilty verdict as the evidence against Butler was "overwhelming."

"We disagree," today's opinion says, adding that the evidence that Butler was not acting in self-defense when he shot Walden "was not particularly strong."

"Accordingly, we vacate Appellant's convictions, and remand this case to the trial court with direction to exercise its discretion to determine under the correct former § 24-9-84.1 (a) (2) standard if the prior felony conviction was properly admitted," the opinion says. "If the trial court decides under the correct standard that the prior felony conviction was properly admitted, then the court should re-enter the judgments of conviction and sentence against Appellant, and Appellant could then take another appeal challenging that ruling. If, on the other hand, the court decides that the prior felony conviction evidence should have been excluded, then a new trial will be necessary."

Attorney for Appellant (Butler): Lucy Roth

Attorneys for Appellee (State): Natalie Paine, District Attorney, Joshua Smith, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith Sr. Asst. A.G., Alex Bernick, Asst. A.G.

Among today’s opinions, the Supreme Court of Georgia has upheld convictions for three people who were sentenced to life in prison without the possibility of parole for the murder and abuse of three young children – ages 18 months, 2 years, and 4 years.

* **LONG V. THE STATE (S20A0785)**

The Georgia Supreme Court has upheld **Jennifer Long’s** malice murder and first-degree child cruelty convictions for the death of her 18-month-old daughter, Alexis Long, in **Muscogee County**.

Long and her husband adopted Alexis in 2011 after the baby’s biological mother died and her biological father surrendered his parental rights. Long’s husband pleaded guilty to a lesser charge and testified against her at trial.

According to the evidence at trial, on Jan. 29, 2012, after the family got back from church in Griffin, GA, where Long’s husband was a guest preacher, she went inside their home with the child while he returned to the car to look for his glasses. He heard a loud noise that seemed to come from the direction of Alexis’s room, and when he got inside, Long told her husband something was wrong with the toddler. He found her on the floor, breathing heavily, and unresponsive to her name. He called 911 and Alexis eventually was taken to Egleston Children’s Hospital in Atlanta. Soon after, Alexis was put on a ventilator. She was declared brain dead the next day and removed from the ventilator. She died the day after that.

The medical examiner determined the toddler died from blunt force trauma to the head. In addition, she had multiple bruises all over her body in varying colors, indicating they were different ages. Investigators found in the Longs’ home a box of “Scar Zone Bruise Cream” on the changing table pad, and two more boxes of the bruise cream on a living room table. Long said that Alexis fell a lot and the bruise cream was to help heal the bruises. A child abuse pediatrician, who was asked to consult on Alexis’s case the day she was brought to Egleston, testified that her scalp had some areas of very thin hair and hair of different lengths, indicating trauma, such as the hair being yanked and broken. She had scabs on the back of her head and a bruise in her ear, as well as a number of retinal hemorrhages, which indicated significant trauma. The pediatrician testified that the bruises covering her body were not consistent with the bruises of a typical toddler from tripping and falling. Rather they were consistent with an ongoing pattern of child abuse, the expert said.

In her appeal to the state Supreme Court, Long argued among other things that the evidence did not exclude the reasonable hypothesis that her husband had killed Alexis. In today’s opinion, however, **Presiding Justice David E. Nahmias** writes for a unanimous court that the evidence was sufficient for the jury to reject that hypothesis as unreasonable and instead to find that Long was responsible for Alexis’s death.

* **SNIPES V. THE STATE (S20A0934)**

The Georgia Supreme Court has upheld the convictions of **Chiquita Snipes** for the malice murder and abuse of a 2-year-old boy, Ty'Qwan Evans, in **Pike County**.

According to the evidence at trial, the toddler was temporarily staying with Snipes and her co-defendant, Kenisha Neal, along with Neal's 9-year-old niece. At the time, Ty'Qwan's mother was unable to care for the little boy.

On May 22, 2010, an officer responded to a call for an unresponsive child and found Snipes performing CPR on Ty'Qwan, who was wearing nothing but a t-shirt. The officer noticed several marks on the child that appeared to be in various stages of healing. He also observed that neither woman – Snipes nor Neal – appeared to be upset. Neal told the officer the toddler had woken at 5:00 a.m., she took him to the bathroom, then brought him back to bed with her. When she tried to wake him at 7:00 a.m., he was unresponsive. She called the child's mother, and after the mother arrived and could not wake him, they called 911.

Snipes, who was sleeping in a separate bedroom, told officers she had heard “a loud bump” at around 4:00 a.m., and had found Neal in the bathroom with Ty'Qwan. She said Neal told her the little boy, whom they were trying to potty train, had fallen off the toilet and struck his head on the bathtub. When they asked him if he was OK, he nodded yes, and they all went back to bed. When Snipes woke at 7:00 a.m., she found Neal and Ty'Qwan in the living room, and Neal told her she could not wake the child. Snipes tried to wake him and said his body was cold to the touch. He died that day.

Snipes and Neal were indicted for malice murder, felony murder, aggravated assault, and first-degree cruelty to children. Prior to trial, Neal pleaded guilty to felony murder in exchange for a life prison sentence with the possibility of parole, and she agreed to testify for the State.

Today's opinion, written by **Justice Carla Wong McMillian**, describes in detail the effects of the abuse endured by the toddler prior to his death. Neal testified that because she was frequently away from the house, Snipes was the primary disciplinarian. She said she had witnessed Snipes holding Ty'Qwan upside down by his ankle and hitting him hard with a belt and brush. “When Ty'Qwan had an accident while potty training, Snipes put hot water from a coffee pot on a rag and put it on his penis,” the opinion says. “Another time, Snipes forced Ty'Qwan to stand naked over a vent all night after he had an accident.” Neal's niece also testified that she witnessed Snipes holding the toddler upside down and using various objects and her hand to spank him. “At least twice, Snipes caused Ty'Qwan's head to hit the wall ‘hard’ as she spanked him,” the opinion says. “At trial, the State also played a recording of Snipes's interview with law enforcement, in which Snipes admitting biting Ty'Qwan, pinching him, hitting him in the face, holding him upside down and accidentally causing his head to hit a doorknob, spanking him with a belt and brush, and putting water on his penis that may have caused an injury during the days leading up to his death,” the opinion says.

Following the April 2013 trial, the jury found Snipes guilty on all charges. In her appeal to the Georgia Supreme Court, Snipes argued in part that the evidence was insufficient to support her malice murder conviction and that only Neal could be responsible for the child's death. “This argument, however, grossly mischaracterizes the evidence presented at trial,” today's opinion says. “The State's medical examiner testified that Ty'Qwan's death was caused by the cumulative effect of his injuries both acute and chronic, and not by any single injury on the night

of his death.” Furthermore, even if Neal caused the most immediate injuries to Ty’Qwan, the trial court instructed the jury that Snipes could be convicted as a party to the crime of malice murder, which the evidence supported. We thus conclude that the evidence presented at trial was sufficient to authorize a rational jury to find Snipes guilty beyond a reasonable doubt of malice murder.”

* **ROBINSON V. THE STATE (S20A0812)**

In the third case involving the murder of a child, the Georgia Supreme Court has upheld the convictions of **James Robinson** for the murder in **Chatham County** of 4-year-old Lalia Hawthorne and the aggravated assault and child cruelty of her 3-year-old sister.

According to the evidence at trial, in 2015, Robinson was living with his then-girlfriend, Summer Sanchez, and her two sons and two daughters, Lalia and 3-year-old N.H. Robinson worked during the day and Sanchez worked at night. When Sanchez returned home from work the morning of Oct. 27, 2015, she found Lalia on the floor. It appeared as though the little girl had rolled off the bed and was sleeping. Sanchez put her back in bed. Later in the morning, Robinson woke Sanchez and asked her to get the truck ready while he got the girls ready. Shortly after Sanchez went outside, Robinson ran out to Sanchez saying that Lalia couldn’t breathe. Both went back inside, and while Robinson was giving Lalia CPR, Sanchez called 911.

Lalia arrived at the hospital in cardiac arrest and died. Initially doctors believed the child had been infected with meningococemia. Upon autopsy, however, the medical examiner found extensive bruising on the child’s body and determined the cause of death was blunt force injury to the abdomen. Sanchez’s other daughter, N.H., was admitted to the hospital that night with vomiting and a fever. Doctors believed she too may have been suffering from meningococemia. But after the autopsy of Lalia, they took a closer look at N.H. and determined her bowel had been bruised. The hospital called in a physician to consult on the case, and as an expert in child abuse pediatrics, she later testified that N.H. had been beaten and bruised, bitten on her leg by an adult, and punched in the stomach.

At Robinson’s trial, Sanchez testified that he had disciplined her sons, ages 8 and 5, by punching them in the chest. She said she had found bite marks on N.H. while bathing her, and that Robinson had told her he had been playing with the child and may have bitten her “too hard.” The jury also saw videotaped interviews of the boys by a social worker. Using a stuffed animal, the 5-year-old demonstrated how Robinson would hit the girls in their stomach.

After Robinson spoke to detectives following Lalia’s death, he told Sanchez he would “do the time.” Shortly after, he tried to commit suicide by shooting himself in the head. An informant who was in jail with Robinson said Robinson had told him he had attempted suicide because of the “guilt” and that he “did it,” i.e. killed the child, because he was angry at Sanchez. Following trial, the jury found Robinson guilty of felony murder, aggravated assault, and first degree cruelty to children involving Lalia. The jury also found him guilty of aggravated assault and first degree cruelty to children involving N.H.

In his appeal to the Georgia Supreme Court, Robinson argues among other things that the evidence was insufficient to support his convictions. The State’s evidence, he argued, did not exclude the reasonable hypothesis that Sanchez alone inflicted Lalia’s fatal injuries.

“But the evidence showed that Robinson told the jailhouse informant that he killed Lalia,” **Justice John J. Ellington** writes for a unanimous court. “Thus, Robinson ‘made not a

mere incriminating admission, but a confession, which is direct evidence of his guilt, and this is not, therefore, a purely circumstantial case.” The evidence involving the crimes against N.H. was circumstantial, but due to the circumstances, “The jury could have found that it was not a reasonable hypothesis that Sanchez alone inflicted N.H.’s injuries,” today’s opinion says.

“The evidence was sufficient to exclude every reasonable hypothesis other than Robinson’s guilt, and for a rational trier of fact to find beyond a reasonable doubt that Robinson was guilty of the crimes for which he was convicted.”

With today’s opinion, the Court has vacated one of Robinson’s convictions for first degree child cruelty involving N.H. to correct a sentencing error, but it has affirmed all his other convictions.

IN 11 OTHER MURDER CASES, the Supreme Court of Georgia has upheld convictions and life prison sentences for:

- * Kahleil C. Barton-Smith (Rockdale Co.) **BARTON-SMITH V. THE STATE (S20A0941)**
- * Jonathan Edward Ellison (Dade Co.) **ELLISON V. THE STATE (S20A0984)**
- * Ronald Fisher (Fulton Co.) **FISHER V. THE STATE (S20A1004)**
- * Ricard James Harrison (Bacon Co.) **HARRISON V. THE STATE (S20A0856)**
- * Terry B. Marshall (Fulton Co.) **MARSHALL V. THE STATE (S20A0697)**
(The Supreme Court has upheld Marshall’s malice murder conviction and life-without-parole prison sentence for the murder of Marshal Tucker and the attempted murder of Latonia Patterson. But it has identified several “merger” errors made by the trial court in which various charges should have been merged into others for sentencing purposes. It has vacated Marshall’s conviction and five-year prison sentence for possession of a firearm during the commission of a felony.)
- * Vraimone Parker (Fulton Co.) **PARKER V. THE STATE (S20A0826)**
- * Jesus Hernandez Perez (Cobb Co.) **PEREZ V. THE STATE (S20A0632)**
- * Michael Keith Russell (Cherokee Co.) **RUSSELL V. THE STATE (S20A0910)**
(The Supreme Court has upheld Russell’s malice murder and life-without-parole prison sentence in connection with the death of his girlfriend, Christy Waller. However, the trial court has vacated one of his aggravated assault convictions which should have been merged into his malice murder conviction for sentencing purposes.)
- * Jonathan Peter Scott (Fulton Co.) **SCOTT V. THE STATE (S20A0880)**
- * Desean Martin Subar (DeKalb Co.) **SUBAR V. THE STATE (S20A1195)**
- * Antonio Wallace (Ware Co.) **WALLACE V. THE STATE (S20A1186)**

