



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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DANFORTH, WARDEN V. CHAPMAN (S15A0147)

CHAPMAN V. DANFORTH, WARDEN (S15X0148)

A man convicted in **Haralson County** of murder and arson has won a new trial under a decision today by the Supreme Court of Georgia.

In today's unanimous opinion, written by **Justice Robert Benham**, the high court has upheld a lower court's ruling that Justin W. Chapman's convictions must be thrown out because State prosecutors suppressed evidence that would have been favorable to Chapman's case, in violation of the U.S. Supreme Court's 1963 ruling in *Brady v. Maryland*.

According to the facts of the case, in the early morning hours of June 20, 2006, a fire erupted at a duplex on Sharp Street in Bremen, GA that resulted in the death from smoke inhalation of one of the residents, Alice Jackson. Jackson lived in half of the duplex while the other half was occupied by Chapman, his then-girlfriend, and four children. According to the State's case, shortly before the fire, the owner of the duplex informed Chapman that there were too many people living in his apartment and that they would have to move.

The night before the fire, a gang member named Paul Chieves went to Chapman's home where, according to the defense, Chieves confronted Chapman about a perceived insult Chapman had made to a member of Chieves' family. A fight broke out, police were called and Chieves was arrested. According to the State, Chapman and his girlfriend then began to argue, and in the middle of the night, Chapman left. According to the defense, Chapman and his whole family left and drove about 15 minutes away to stay with friends after fearing retaliation from Chieves' fellow gang members. In the early morning hours of June 20, a neighbor smelled smoke at about

3:00 a.m. Minutes later, the duplex was fully engulfed in flames. Responding firefighters discovered Jackson's body.

Fire investigators concluded that the fire was intentionally set. Following Chapman's arrest the next day, prosecutors said he told fellow inmates that he had been angry with the landlord, and had gotten even with the landlord by setting the fire. In June 2007, a jury found Chapman guilty of murder and arson, and he was sentenced to life in prison. In February 2012, the state Supreme Court upheld his convictions and sentence. Chapman then filed a petition for a "writ of habeas corpus," challenging his murder conviction on six grounds. (Habeas corpus is a civil proceeding that allows already convicted prisoners to challenge their conviction on constitutional grounds in the county where they're incarcerated, which in this case was Telfair County. The action is generally filed against the prison warden, which here was William M. Danforth.)

In January 2014, after a three-day hearing, the habeas court threw out Chapman's murder conviction by ruling in his favor on three of his six claims. In one, the habeas court ruled that in three instances, State prosecutors suppressed evidence that would have been favorable to Chapman's case in violation of the U.S. Supreme Court's *Brady* ruling and its 1972 ruling in *Giglio v. United States*. Specifically, the habeas court found that State prosecutors withheld their own videotaped pre-trial interview of Joseph White, who testified at trial that Chapman had confessed to the crime while the two were in jail together. The video of that interview discloses that White was seeking the prosecutor's assistance with charges he was facing in exchange for information he had about Chapman's case. At trial, however, White denied he was seeking any type of help with his then-pending charges in exchange for his testimony. The State also withheld part of a letter White had written to his pastor, as well as statements the prosecutor had obtained from another inmate incarcerated with White and Chapman that could have been used at trial to attack White's credibility, the habeas court found. The State then appealed the habeas court's ruling to the Georgia Supreme Court, while in a cross-appeal, Chapman argued the habeas court should have granted him relief on the other grounds as well.

Today's opinion quotes the *Brady* ruling, in which the U.S. Supreme Court stated that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution."

"This includes the suppression of impeachment evidence that may be used to challenge the credibility of a witness," today's opinion says. "White was the only State witness who testified that Chapman had confessed to arson." One of the statements the prosecutor withheld was from a second inmate the prosecutor had planned to have testify, until that inmate told the prosecutor he had never heard Chapman confess. In response, the prosecutor canceled the testimony of the second inmate, whom White had identified as someone who had also heard Chapman confess.

"It is uncontroverted that at the time White testified, several items of favorable evidence in the State's possession had not been disclosed to the defense," the opinion says. Such evidence, "which impeached and/or cast doubt on White's credibility, was material to Chapman's defense."

All the suppressed items "constitute favorable evidence which could have been used by the defense to show contradictions or inconsistencies in White's trial testimony and other

evidence, creating a reasonable probability that the outcome of the trial would have been different...Accordingly, the habeas court did not err when it awarded Chapman habeas relief pursuant to *Brady* and *Giglio*.”

Because Chapman is now entitled to a new trial, the State’s remaining allegations of error “are moot,” the opinion says, as is Chapman’s cross-appeal, which the Court has dismissed.

Attorneys for Appellant (State): Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

Attorneys for Appellee (Chapman): Emmet Bondurant, John Rains, IV, Michael Caplan

LEGACY ACADEMY V. MAMILOVE (S14G1891)

The Supreme Court of Georgia has reversed a Georgia Court of Appeals ruling and decided that two sisters who lost money after purchasing a daycare franchise in **Gwinnett County** should have read the contract before signing it.

In today’s unanimous opinion, written by **Chief Justice Hugh Thompson**, the high court has ruled that Legacy Academy, Inc. and its officers, Frank and Melissa Turner – whom a jury determined fraudulently induced the sisters into signing the franchise agreement – must be granted a new trial. The Court of Appeals had upheld the jury’s decision in favor of the sisters, Michele and Lorraine Reymond, who were awarded \$1,125,000 in damages and \$30,000 to cover legal expenses.

But the high court has rejected the two lower courts’ rulings, finding that the sisters’ legal claims of fraud and violations of the state’s Racketeer Influenced and Corrupt Organizations Act were barred because the Reymonds were not “prevented” from reading the contract simply because they were “pressured” to sign it.

According to the facts at trial, in 2001 the Reymonds approached the Turners about opening a Legacy Academy Center daycare franchise. Michele testified that in July 2001, the Turners gave the sisters an income and expense statement that was purportedly based on actual income and expenses of existing Legacy franchises. Based on the earnings claim, a new franchisee could expect to net about \$260,000 after the first year of operation and about \$440,000 after each of the second and third years. The Turners showed the Reymonds property on Old Peachtree Road and the sisters wanted to build the daycare center there. They created an entity called Mamilove, LLC to hold title to the property. In September 2001, Michele – who had a master’s degree in business administration and worked for a large corporation – and Lorraine, who worked for WebMD, met with the Turners, who gave them a 17-page “Franchise Offering Circular for Prospective Franchisees” and a 37-page, 25-year Franchise Agreement. According to Michele’s testimony, the sisters did not have time to read the documents or consult with an attorney before signing them, because the Turners “pressured” them, telling them if they didn’t sign that day, other franchisees would “take” the Old Peachtree Road location and it could be months before another location became available. As a result, the sisters signed the agreement without reading it or the circular. They subsequently learned from the Turners that the Old Peachtree Road site was not available due to zoning issues. Several months later, in February 2002, the Reymonds signed an agreement to purchase 2.6 acres of land in Sugar Hill from the Turners. They also signed a contract with Turner’s construction company to build the center. Ultimately, the sisters invested more than \$2.2 million in the franchise and daycare center.

By the end of its first year of operation, they had lost \$212,300. Although in 2004 and 2005, they recorded net earnings of \$103,692 and \$66,507, the amounts were far less than the \$440,000 other franchisees had earned according to the earnings claim. In 2008, five of Legacy's franchisees jointly left the franchise and sued Legacy and the Turners, asserting claims for fraud, negligent misrepresentation, RICO violations and breach of contract. In November 2010, the sisters sued Legacy, alleging the Turners had fraudulently induced them into signing the agreement by providing false information about the historical earnings of existing franchisees. They sought to rescind the agreement and recover damages, based on allegations of fraud, negligent misrepresentation and violations of the Georgia RICO Act.

At trial, the Reymonds alleged that the earnings claim the Turners gave them in 2001 was fraudulent as it was not an actual representation of the actual revenues and expenses of existing Legacy franchises, but rather a speculation. In addition, Mamilove presented the testimony of four former Legacy franchisees, who testified they had had similar experiences with the Turners, through the receipt of earnings claims and the pressure to sign an agreement. In their defense, the Turners denied that they or anyone representing Legacy had given the Reymonds an earnings claim for the franchise before they signed the agreement. They also claimed they had given the Reymonds the franchise circular prior to Sept. 13 and denied they had pressured or prevented the Reymonds from reading the franchise agreement before they signed it.

Following the trial, the jury ruled in favor of the Reymonds and awarded them damages and attorney's fees. The Turners appealed but the Court of Appeals upheld the judgment, finding that based on the evidence, "the jury was authorized to find that the Turners intentionally prevented the Reymonds from reading the agreement before signing it" by giving it to them on the same day it was signed and telling them they had to sign it that day or another franchisee would be allowed to take the desired location.

In today's opinion, the Georgia Supreme Court has reversed the jury's verdict and remanded the case for a new trial, ruling that the sisters could not rescind the contract based on fraudulent inducement because the claim was precluded by the Reymonds' failure to read the agreement. As a result, Legacy was entitled to directed verdicts in their favor regarding the allegations of fraud, negligent misrepresentation, and RICO violations. The high court is remanding the case because the jury verdict form was unclear.

"The only type of fraud that can relieve a party of his obligation to read a written contract and be bound by its terms is a fraud that prevents the party from reading the contract," the opinion says, quoting the state Supreme Court's 2011 decision in *Novare Group, Inc. v. Sarif*.

While the Reymonds' allegations "would have authorized a jury to conclude that Legacy rushed the Reymonds by threatening the loss of their desired franchise location, they are legally insufficient to support a finding that the Reymonds *were prevented from reading the Agreement* through fraud or misleading artifice," today's opinion says. "Indeed, the complaint, the Reymonds' arguments, and the evidence at trial all demonstrate that the Reymonds were not prevented from reading the Agreement but that they blindly relied on Legacy's representations regarding expected income as a result of their own desire to quickly begin construction of their center at a particular location."

Furthermore, had the sisters chosen to read the agreement, they would have seen that they were signing an agreement which specifically stated they were not relying on any representations by Legacy regarding potential profit or success of the franchise. A disclaimer clause in the

agreement stated that “Franchisor expressly disclaims the making of, and Franchisee and each Owner acknowledge that it has not received from Franchisor or any party on behalf of Franchisor, any representation, warranty or guarantee, express or implied, as to the potential volume, profit, income or success of the business licensed under this agreement.”

“Because the pre-contractual earnings claim upon which the Reymonds allege they relied expressly contradicts the disclaimer and acknowledgment provisions of the agreement, their reliance on such representations was unreasonable as a matter of law,” the opinion says.

The agreement also included a standard “merger” or “entire agreement” clause stating that the agreement signed by the sisters “terminates and supersedes any prior agreement between the parties concerning the same subject matter.” “Under Georgia law, as ‘a matter of law, a valid merger clause executed by two or more parties in an arm’s length transaction precludes any subsequent claim of deceit based upon pre-contractual representations,’” the opinion says.

Attorneys for Appellant (Legacy): Charles Bachman, Charles Joyner

Attorneys for Appellees (Mamilove): Cary Ichter, William Davis

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

* Brian Kass (Fulton Co.)

KASS V. THE STATE (S15A0037)

* Hugo M. Tepanca (Hall Co.)

TEPANCA V. THE STATE (S15A0045)

* Abel Torres (Newton Co.)

TORRES V. THE STATE (S15A0396)

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

* Tracey Dawn Gibson

IN THE MATTER OF: TRACEY DAWN GIBSON
(S15Y0057, S15Y0058, S15Y0059, S15Y0060)

The Court has ordered the **indefinite suspension** of attorney:

* Wilson R. Smith

IN THE MATTER OF: WILSON R. SMITH
(S15Y0827)