



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

Published Monday, February 2, 2015

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ROSS V. THE STATE (S14A1278)

The Supreme Court of Georgia has upheld the murder conviction and life prison sentence with no chance of parole given to Lynitra McKale Ross for her role in the murder-for-hire plot that resulted in the 2010 shooting death of Richard Schoeck.

In this high-profile **Hall County** case, the high court has ruled that the evidence was sufficient to find Ross guilty beyond a reasonable doubt of Schoeck's murder, and it has rejected her argument that cell phone records tying her to the crime should have been suppressed at trial.

According to the evidence, Richard's wife, Stacey Morgan Schoeck, worked with Ross at Georgia Spine and Neurosurgery Center, and the two were friends. Stacey was an office administrator and Ross was a medical assistant and billing coder. In January 2010, over lunch at a Mexican restaurant, Stacey told Ross she wanted to have her husband killed because she believed he was molesting her two young sons. Stacey had been married before and Richard had adopted her children after they married. (She later told police her husband had not been molesting the children.) Ross replied that her boyfriend might be willing to commit the crime for money. Ross then asked Reginald Coleman, with whom she had a son, if he would kill Richard and he said he would. Stacey and Ross subsequently met Coleman at his apartment where Stacey suggested that Belton Bridge Park in Hall County, near her grandparents' house, would be a good place to kill her husband. She later testified she informed Coleman that as payment, she could "easily get \$10,000 cash" for him, and would also give him her grandparents' 2009 Chevy Impala and the home she owned that his girlfriend, Ross, had been renting from her. The threesome agreed the murder would take place on Valentine's Day and be staged to look like a

robbery. Stacey then rode with Coleman to an ATM to get \$600 for a gun that Coleman could use and then toss.

On Jan. 23, 2010, Stacey, Ross and Coleman rode together to Belton Bridge Park to conduct a dry run of the murder. Subsequently, a bill of sale for the Impala passed from Stacey to Ross. Stacey also transferred to Ross' account \$8,900 with plans to make an additional \$1,100 deposit before the murder.

On Valentine's Day, Feb. 14, 2010, Stacey and her husband drove in separate cars to Cleveland, GA, to visit her grandparents. The plan was that after the visit, the two would drive separately to Belton Bridge Park where they would exchange Valentine's Day cards. Richard left 45 minutes before Stacey. While she was still at her grandparents' house, Stacey got a call from Ross, saying Coleman needed the color of her husband's truck, which Stacey told her. Stacey later got a text message from Ross wishing her a "Happy Valentine's Day," indicating the murder had been completed. Stacey then left her grandparents' house and went to Belton Bridge Park where she found Richard's body and called 911, acting distraught.

At the scene, police found tire treads, which were later matched to tires belonging to the Impala that Stacey had given to Coleman. Based on other evidence, investigators believed Richard had gotten out of his car, walked toward a car he recognized, was shot, doubled over, then shot at closer range while on the ground. Valentine's Day cards were found in Richard's truck, along with cups and sparkling grape juice. Investigators first came across the names of Coleman and Ross while using "Cellbrite" software to extract data from Stacey's cell phone with her consent. From records they obtained, they found text messages between Ross and Stacey on the night of Richard's murder, as well as a phone call and earlier texts about the money transfer to Ross. Investigators then obtained a court order to obtain "tower dump" records from two Sprint cell phone towers located near Belton Bridge Park, which contained records of any calls relayed through the towers around the time of Richard's murder. Those records revealed that at 8:40 p. m. on Feb. 14, 2010, a call was made from Coleman's phone to Ross's phone. Investigators then obtained phone records for both Coleman and Ross and found more phone calls and text messages among the three, as well as evidence of the money transfers and use of the car and home as payment for the murder.

In June 2010, all three were indicted in Hall County for the malice murder of Richard Schoeck. His wife eventually pleaded guilty and testified for the State against Ross and Coleman. Prior to trial, Ross's attorney filed a motion to suppress the cell phone "tower dump" records, but the trial judge denied the motion. In May 2012, a jury found Ross guilty and she was sentenced to life without parole. Both Stacey and Coleman were also convicted separately and received the same sentence.

In her appeal, Ross argued the trial court erred by admitting into evidence at trial the Sprint cell phone "tower dump" records. But in today's opinion, written by **Justice Harold Melton**, the high court rejects the argument.

Ross lacked standing to challenge the issue, in part because the records were owned by Sprint. "Ross did not own the 'tower dump' records, and the records were not used to show the location from which Ross received Coleman's call when they were in contact with each other around the time of the murder," the opinion says. "Thus, at least as to Ross, the 'tower dump' cell phone records at issue here are no different than telephone billing records, which are business records owned by the telephone company, not the defendant. As a result, defendants

[like Ross] generally lack standing to challenge the release of such records under the Fourth Amendment because they do not have a reasonable expectation of privacy in records belonging to someone else.” She similarly lacks standing to challenge the admission of the records under state law. “Furthermore, the remedy sought by Ross, namely suppression of the evidence, is not an available remedy under federal law,” the opinion says. Instead, federal law provides that a civil action, rather than suppression, is the available remedy for the improper release of the records.

Attorney for Appellant (Ross): Mark Yurachek

Attorneys for Appellee (State): Lee Darragh, District Attorney, Wanda Vance, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Ryan Kolb, Asst. A.G.

THE STATE V. SIMS (S14A1657)

A man convicted of murder in **Stephens County** is entitled to a new trial, under a decision today by the Georgia Supreme Court.

In a unanimous ruling, **Justice Robert Benham** writes that the District Attorney improperly commented on the man’s pre-arrest silence and failure to come forward to police, and his attorney should have objected.

According to the facts of the case, the night of March 10, 2012, Kim Motes had a party at her house. Sometime after midnight, the partyers decided they wanted cigarettes and Motes drove a group of them, one of whom was Dana Shawn Hancock, to a nearby convenience store. While there, Motes saw her former boyfriend, Steve Sims, Jr., with another woman. Motes and the others then followed Sims to his grandmother’s house, where he lived. Motes stopped the car in the middle of the road, and got out to confront him. According to those in the car who later testified, when Motes and Sims began arguing, Hancock also got out of the car, took Motes by the arm, and tried to lead her away. Sims told Hancock to mind his own business, and Sims and Hancock started shoving each other. According to witnesses, Sims then went into his grandmother’s house and returned with a gun. From a distance of about four feet, Sims fired at Hancock, hitting him three times. All of the eyewitnesses, including Sims’ father, later testified that Hancock was unarmed. Hancock rolled around on the ground, grabbed the car door and managed to get himself into the car’s front seat. Motes started to drive him to the hospital but stopped the car at the bottom of the hill and called 911 when Hancock appeared to have stopped breathing. He died from gunshot wounds to the chest.

Sims was arrested and taken to the Toccoa Police Department where GBI Special Agent Brad Parks advised Sims of his Miranda rights, including his right to remain silent, which Sims waived in writing. Sims initially told the agent that he had not shot Hancock. However, Sims later admitted he had gone inside and retrieved a weapon from underneath his grandmother’s couch. He said he felt as if Hancock had “took his manhood” and was “disrespectful.”

In his opening statement at trial, the District Attorney made several comments about Sims’ failure to call police or seek help for Hancock following the shooting and before he was arrested. Among them: “The evidence will also be that Steve Sims never called the police at any time, never called 911, nor did anybody associated with him, not to get help for Mr. Hancock or to report what had happened.” Sims’ defense at trial was that he was defending himself against Hancock, who was 6 feet 5 inches tall and weighed 350 pounds. Sims weighed 180 pounds.

On Sept. 28, 2012, the jury convicted Sims of felony murder, aggravated assault, and gun charges. He was sentenced to life plus five years in prison. Sims' attorney filed a motion requesting a new trial, and in May 2014, the trial judge granted it, finding that his trial attorney rendered ineffective assistance of counsel by failing to object to the District Attorney's comments about Sims' silence before his arrest and his failure to come forward. The State then appealed to the Georgia Supreme Court, arguing that there was no basis for the trial attorney to object to the prosecutor's comments or to be found deficient in his performance.

In today's opinion, the high court finds that the evidence at trial "was sufficient to authorize a rational trier of fact to find appellee guilty beyond a reasonable doubt of the crimes for which he was convicted.

However, the trial court was correct in ruling that Sims' trial attorney was deficient for not objecting to the District Attorney's comments at the opening of the trial, and his failure to do so prejudiced the defense, the high court finds.

Since the Georgia Supreme Court's decision in *Mallory v. State* in 1991, "this Court has unequivocally held: It is a bright-line rule in Georgia that the State may not comment on either a defendant's silence prior to arrest or failure to come forward voluntarily," today's opinion says.

The prosecutor's comments were not limited to noting inconsistencies in Sims' pre-trial statements to authorities. "Rather the comments expressly emphasize that [Sims] failed to call police after he shot Hancock and prior to being arrested. This violated the bright-line rule of *Mallory*."

Sims' sole defense at trial was that he was justified in defending himself against Hancock. "The prosecutor's repeated improper comments at the very beginning of the trial left the jury with the initial impression that [Sims] could be found guilty based on his failure to contact police after the shooting," the opinion says. "Such an inference of guilt is what our ruling in *Mallory* was designed to prevent. It is not unreasonable to surmise that such an initial impression of guilt likely tainted the entire trial."

Attorneys for Appellant (State): Brian Rickman, District Attorney, Richard Bridgeman, Asst. D.A.

Attorney for Appellee (Sims): Brian Steel

STEWART V. THE STATE (S14A1482)

The Supreme Court of Georgia has upheld the convictions and life-without-parole sentence given to a man in **Rockdale County** for the murder of his 5-month-old son.

In today's unanimous opinion, **Justice Robert Benham** writes that the evidence against William Grant Stewart was "sufficient to authorize a rational trier of fact to find appellant guilty beyond a reasonable doubt of the crimes for which he was convicted."

According to the facts at trial, on July 28, 2010, Stewart called 911 and reported that his son, 5-month-old James Antonio Stewart, was not breathing. A deputy with the Rockdale County Sheriff's Department responded and went to Stewart's home in Conyers, where Stewart lived with his wife, Matea Mendez Stewart, their baby and her mother. His wife let the officer into the home where the officer found the baby in the back bedroom lying on his back in a crib and dressed in a diaper. Discovering that he had no pulse and was not breathing, the officer began administering CPR until paramedics arrived. They determined the baby showed signs of oxygen

deprivation and transported the baby to Rockdale Hospital. At the scene, Stewart told the officer that he and his wife had laid the infant down for a nap and when they went back to check on him, he was unresponsive. He said that despite shaking him, the baby would not wake up. Stewart also told the officer that at some point when the couple went into the room to feed him, there was a towel on the baby's face. Investigators later found a blue blanket in the crib, as well as a bib and a burp cloth, all of which had reddish-brown stains that were later confirmed as the baby's blood.

While treating the baby at the hospital, the emergency physician discovered he had a fractured rib and arm and bruised skull, and the infant was transferred to Egleston hospital for children in Atlanta. A CAT scan showed signs of bleeding in the brain, and physicians determined the baby was brain dead as a result of a fracture to his skull that would have required substantial force. A pediatric radiologist who viewed the X-rays noticed "multiple fractures in different stages of healing that were highly consistent with child abuse." The radiologist noted the victim's skull injuries and fractures to the baby's ribs, right leg, right knee, left leg, and left arm – most of which were consistent with deliberate beating injuries that would have been painful to the infant. The injuries to the baby's ribs were consistent with squeezing. Upon autopsying the baby, the forensic pathologist concluded the baby died from a fractured skull and ruled the death a homicide. Stewart's wife told one of the pediatricians that the baby once had fallen off a couch while solely in her husband's care. But neither Stewart, nor his wife, had an explanation for all the baby's injuries. In August 2010, both were arrested and charged with murder.

At a joint jury trial, Stewart's wife testified she believed her husband had killed the baby. The jury found Stewart guilty of malice murder, cruelty to children and other crimes, and he was sentenced to life without parole plus 30 years. His wife was found guilty of felony murder and other crimes, although this appeal only involves Stewart's convictions and sentence.

In today's opinion, the high court has rejected Stewart's argument that the trial court was wrong to deny his motion to sever his trial from his wife's. In a capital case in which the death penalty is not sought, this Court has held before that the person asking to sever his trial "must make a clear showing that the joint trial was prejudicial and resulted in a denial of due process," the opinion says. "In this case, we find no abuse of discretion." The Supreme Court has also rejected Stewart's contention that the trial court erred in admitting a post-autopsy photograph of the baby's brain injuries during testimony by the medical examiner. "A photograph that depicts the victim after autopsy incisions or after the pathologist changes the state of the body is admissible when necessary to show some material fact which becomes apparent only because of the autopsy," the opinion says. "Given that the victim died from the injuries to his skull and brain, the post-autopsy photograph was necessary to show a material fact....The trial court did not err."

Attorney for Appellant (Stewart): Beau Worthington

Attorneys for Appellee (State): Richard Read, District Attorney, Roberta Earnhardt, Sr. District Attorney, Debra Sullivan, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

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

- * Ray Bryant (Fulton Co.) **BRYANT V. THE STATE (S14A1531)**
- * Jean Pierre DeVaughn (Fulton Co.) **DEVAUGHN V. THE STATE (S14A1722)**
- * Paul Johnson (Fulton Co.) **JOHNSON V. THE STATE (S141933)**
- * Carlos Redding (Fulton Co.) **REDDING V. THE STATE (S14A1679)**
- * Bobby Gene Thomas (Dougherty Co.) **THOMAS V. THE STATE (S14A1918)**

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

- * Rand J. Csehy **IN THE MATTER OF: RAND J. CSEHY (S15Y0372)**

- * Robert T. Thompson, Jr. **IN THE MATTER OF: ROBERT T. THOMPSON, JR. (S15Y0003)**