



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



SUMMARIES OF OPINIONS

Published Monday, March 2, 2015

Please note: *Opinion summaries are prepared by the Public Information Office for the general public and news media. Summaries are not prepared for every opinion released by the Court, but only for those cases considered of great public interest. Opinion summaries are not to be considered as official opinions of the Court. The full opinions are available on the Supreme Court website at www.gasupreme.us.*

THE STATE V. MOBLEY (S14A1329)

In this high-profile Atlanta case, a young man's conviction for murder has been reinstated under a decision today by the Supreme Court of Georgia.

Ricci Mobley was 17 years old when he was charged in 2009 with shooting and killing 16-year-old Bryan Tinch. In May 2011, a jury convicted Mobley of felony murder, aggravated assault, and gun charges, including possession of a firearm by a person under the age of 18, and he was sentenced to life in prison. But in 2013, a **Fulton County** judge threw out the convictions and granted Mobley a new trial on the ground that his trial attorneys had been deficient in their representation based on a jury instruction they requested.

The District Attorney appealed to the state Supreme Court, and in today's opinion, **Justice Keith Blackwell** writes for the high court that "we conclude that Mobley is not entitled to a new trial upon this ground. Accordingly, we reverse the order awarding a new trial to Mobley, and reinstate the judgment of conviction."

The trial court summarized the facts of the case as follows: "Defendant [Mobley] shot and killed Bryan Tinch in broad daylight on 7 July 2009 – this fact was uncontested at trial. Earlier that day, Defendant and Tinch had become embroiled in a heated argument. Just prior to the shooting, Tinch and his brother Branden walked by Defendant's grandmother's yard where Defendant was sitting with his friends Chaze Scott and Laburk Styles. As Tinch and his brother passed by, Tinch and Defendant renewed their argument. Tinch, who was far larger than Defendant, stepped toward the yard, reached toward his pants, and in the words of his brother, 'did the one-on-one, that means he'll fight you one-on-one,' 'pull[ing] up his pants like he was

fixing to run up in the yard.’ Defendant backed away, and Scott handed him a gun. Defendant fired an initial shot either into the ground or into the air – the exact direction was unclear, other than that it was a warning shot not fired at Tinch – and then fired two or three more shots as Tinch and his brother ran back toward their house. Tinch was hit once in the chest and died from his wound.”

Following his convictions at trial, Mobley’s attorney filed a motion requesting a new trial on a number of grounds, and the trial court granted it based on only one: that Mobley was denied effective assistance of counsel at trial, in violation of his constitutional rights, because his lawyers asked the judge to instruct the jury about the crime of “mutual combat,” which they argued undermined his sole defense theory – that he killed Tinch in self-defense. (Prior to jury deliberations, the judge “charges” the jury, or instructs the jury, about the laws that are applicable to the particular case.) In this case, the charge the judge read to the jury about the law of mutual combat, at Mobley’s attorney’s request, began: “Mutual combat occurs when there is combat between two persons as a result of a sudden quarrel or such circumstances as indicate a purpose, willingness, and intent on the part of both to engage mutually in a fight. It is not essential, to execute mutual combat, that blows be struck or shots be fired. There must be a mutual intent to fight or engage in combat.”

The trial court ruled that the performance of Mobley’s lawyer was deficient because he requested a jury charge on mutual combat even though there was no evidence of mutual combat because there was no evidence Tinch was armed with a deadly weapon. Furthermore, the trial court reasoned, the charge undermined Mobley’s sole defense of justification by instructing jurors that a person engaged in mutual combat may claim justification only if he first withdraws from the encounter and communicates that withdrawal to the other person. The trial court also concluded that Mobley proved there was a reasonable probability that the mutual combat jury instruction affected the outcome of the trial because the case was a close one and the language of the mutual combat instruction conflicted harmfully with the language of the justification instruction.

In today’s opinion, the high court disagrees that Mobley proved he received ineffective assistance of counsel. “To begin, we note that the trial court was wrong to find that justification was the *sole* defense urged by Mobley at trial,” the opinion says. “Although justification certainly was the principal line of defense, Mobley’s lawyers also had a fallback position, arguing that if the killing was not justified, it amounted to only voluntary manslaughter, not murder. Indeed, in the closing arguments, one of those lawyers pointed to evidence that Mobley had been provoked to kill Tinch, noting that sufficient provocation could render a killing only voluntary manslaughter under Georgia law.”

“The trial court also erred with respect to the significance that it attached to the absence of proof at trial that Tinch was armed with a deadly weapon,” the opinion says. While it may be true that both combatants must be armed, “it is not clearly so,” the opinion states. As the Georgia Supreme Court acknowledged only a few years ago, “There is a conflict in the case law with regard to whether there must be evidence that mutual combatants have deadly weapons in order for the jury to be charged on the law of mutual combat.”

Finally, while it is true the charge on mutual combat might have impaired Mobley’s theory of defense that the killing was justified to protect himself, “the charge on mutual combat clearly presented a potential benefit for Mobley too,” the opinion says. As part of the charge, the

trial judge instructed jurors that if they found there was mutual intention on Mobley's and Tinch's parts to enter into mutual combat, and Mobley then killed Tinch, "then ordinarily such killing would be voluntary manslaughter, regardless of which party struck the first blow or fired the first shot."

"Although the charge on mutual combat may have carried a cost to the justification defense, it presented the benefit of improving the chances that the jury might find Mobley guilty of only voluntary manslaughter, not murder," the opinion says.

Ordinarily, it is "not unreasonable for a defense lawyer to seek a charge on voluntary manslaughter as an alternative defense theory in a murder case, in the event that the jury does not accept the primary defense theory. And it usually is not unreasonable in a murder case to request a charge on mutual combat in aid of an instruction on voluntary manslaughter as a lesser included offense."

"For these reasons, the trial court erred when it concluded that Mobley's lawyers performed their duties at trial in an objectively unreasonable way," today's opinion says. "Because he failed to carry his burden, his claim that he was denied the effective assistance of counsel must fail, and he is not entitled to a new trial upon that ground."

Attorneys for Appellant (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A.

Attorney for Appellee (Mobley): Michael Tarleton

BLACK V. THE STATE (S14A1701)

The Supreme Court of Georgia has upheld the murder conviction and life prison sentence given to a **Fulton County** woman for killing her 11-month-old baby son and physically abusing her 2-year-old daughter.

D'hari Black, who was convicted in 2011 with her husband, Keith Black, Jr., of the murder of their son, Keith Black III, and the abuse of their daughter, Kyara Black, appealed her convictions, arguing the evidence was insufficient to convict her and she was denied effective assistance of counsel by her trial attorney, in violation of her constitutional rights.

But in today's opinion, written by **Justice Keith Blackwell**, the high court has unanimously rejected her claims, finding that "the evidence was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Appellant was – either directly or as a party to her husband's criminal activity – guilty of the crimes of which she was convicted."

According to the facts of the case, in 2008 D'hari Black was working for Verizon Wireless. Her husband, who was in the military reserves, had no other employment, and often watched the children at their home in College Park while she worked. On the afternoon of Dec. 13, 2008, he took the children with him to visit his childhood friend, Chaz Davis, at the home of Davis's grandmother. Davis later testified the baby was giggling but tired and Kyara seemed fine. Davis's grandmother later said she noticed no injuries to the baby's head. When D'hari got home that night from work, Keith dropped the children off with his wife and went out to a bar and club with Davis. He got back spent the rest of the night out with Davis, arriving home the next morning at about 4:30 a.m. Not quite an hour later on Dec. 14, 2008, the couple arrived at South Fulton Medical Center with their baby, who was not breathing. The emergency room technician noted that the infant had "a lot of bruising and lacerations mainly to the head" and "a lot of contusions," "almost like lumps," on his scalp and forehead. The doctor found that the

infant's pupils were fixed and dilated, and he was in cardiac arrest. The infant was pronounced dead at 5:45 a.m. The medical examiner who performed the autopsy that day found the baby's head injuries were consistent with having been struck by a "broad-based application of force" or by having been slammed into an object. Abrasions on his forehead could have been caused by fingernails. The baby had bleeding on both sides of his brain and bruising on his kidney. Hemorrhaging in the optic nerve to his eye was likely caused by shaking or blunt force trauma, the medical examiner said. He concluded that the baby boy, who only weighed 11 pounds, died from blunt force injuries to the head that had to have happened within 12 hours of his death. Suspecting child abuse, medical staff contacted the authorities, and a nurse then conducted a wellness check on 2-year-old Kyara. The nurse identified multiple injuries on the toddler's buttocks, hips and lower abdomen, which D'hari said she had sustained on the playground the previous summer. But the explanation was inconsistent with medical tests, which indicated that some of the wounds were likely caused by an electrical cord or looped belt, while others were caused by being struck with a rectangular-shaped object. Further examination revealed that Kyara had various burns and at least eight broken ribs in various stages of healing, which were most likely caused by a squeezing force or blunt force trauma. The physician concluded the little girl would have been in pain and had difficulty taking deep breaths as a result of her injuries. He also discovered in her medical history that in 2007, she'd suffered a broken collarbone. At trial, Keith Black's mother said she had been suspicious of her granddaughter's broken clavicle. While D'hari had said that occurred after she fell out of bed, medical testimony indicated a fall would not have resulted in such an injury. In interviews with authorities, D'hari and Keith gave conflicting stories about how the baby's head was injured, none of which was supported by the medical evidence.

In 2009, D'hari and Keith Black were indicted for murder, aggravated assault and cruelty to children for the murder of Keith Black III and the long-term child abuse of Kyara Black. At trial, evidence was presented that D'hari was alone with the children from 9:30 the night before until her husband got home the morning of Dec. 14, 2008. Following a joint jury trial in June 2011, both were found guilty of all charges. D'hari was sentenced to life plus 10 years in prison. She then appealed to the state Supreme Court.

In her appeal, D'hari argued the evidence was entirely circumstantial and the State failed to exclude all reasonable hypotheses but for her guilt, as the law in effect at the time required. One reasonable hypothesis, she argued, was that her husband had committed the crimes.

"However, not every hypothesis is a reasonable one, and the evidence 'need not exclude every *conceivable* inference or hypothesis – only those that are reasonable,'" the opinion says. Whether an alternative hypothesis is reasonable is a question for the jury, and "we will not disturb that finding unless it is insupportable as a matter of law."

Even assuming her husband committed the crimes, it was up to the jury to decide whether D'hari's actions before, during, and after the crime showed that she shared a criminal intent with him. She had a history of lying about how the children were injured. "A jury could reasonably infer that [D'hari] lied about her children's injuries because she had inflicted the injuries herself, or the jury could infer that some or all of the injuries were inflicted by [her] husband and that he and [D'hari] shared a common criminal intent."

D'hari also claimed she had ineffective legal assistance at trial because her lawyer failed to secure the testimony of a friend who had cared for the children. The woman could have

testified she had twice witnessed Keith abusing the children, once mashing his hand into the baby's face to stop him from crying and another time striking Kyara with a belt. However, given that D'hari "has not presented any evidence that she instructed her lawyer to contact the friend or gave her lawyer any reason to think that the friend might have knowledge of relevant facts, we cannot say that the lawyer was ineffective to the extent that she did not locate the friend and secure her testimony," the opinion says. Furthermore, the friend's testimony would have conflicted with D'hari's defense. She claimed she worked such long hours that she was unaware of her husband's abuse, but the friend's testimony was that D'hari was present in the home and knew about the abuse.

"We conclude that Appellant has failed to carry her burden," the opinion says. "Judgment affirmed."

Attorneys for Appellant (Black): James Bonner, Jr., Michael Tarleton

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Lyndsey Rudder, Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

INDIA-AMERICAN CULTURAL ASSOCIATION, INC., V. ILINK PROFESSIONALS, INC. (S14A1824)

The Supreme Court of Georgia has upheld a **DeKalb County** court's ruling in favor of a company that sued an India-American organization over the use of the name, "Miss India Georgia," to describe a beauty pageant that the organization had held for more than 20 years.

In today's ruling, **Presiding Justice P. Harris Hines** writes that there is no basis for overturning the trial court's grant of a pre-trial injunction to iLink Professionals, Inc. that temporarily prevents the India-American Cultural Association, Inc. from using the trademark.

According to the facts of the case, in 1987, the India-American Cultural Association – which was founded in 1971 to support Indian-Americans and help preserve Indian culture – held its first "Miss India Georgia" and "Miss Teen India Georgia" beauty pageants. It held those pageants annually for the next 23 years under those names. In 2011, due to budgetary constraints, the association decided it could not hold the beauty pageant and devoted its resources instead to the annual Festival of India event.

Since 2006, Salmon "Sonny" Molu, the president of iLink, had been involved in the pageants helping with stage production. Due to his past involvement, Molu told the association that iLink would be willing to host the events in 2012, which the association agreed to, and iLink listed the India-American Cultural Association as a sponsor of the "Miss India Georgia" and "Miss Teen India Georgia" beauty pageants.

In an affidavit, Molu later claimed that Rina Gupta and Lakshmi Vedala, representatives of the India-American Cultural Association, informed Molu that the association had "no plans to conduct any pageants" in the future and no objection to iLink hosting the pageants and using the names. However, Gupta later denied in an affidavit that she made any representations to Molu about the association's intent regarding pageants beyond 2012 and merely told him they did not have the personnel to organize a pageant that year.

In 2013, iLink registered with the Secretary of State the names, "Miss India Georgia" and "Miss Teen India Georgia," as its trademarks. In January 2013, iLink announced it would hold the pageants on July 20, 2013. Soon after, the association announced it would hold the

pageants one week earlier on July 13, 2013, and it secured the Ferst Center for the Arts at Georgia Tech as the location. On May 13, 2013, iLink sent a letter to the India-American Cultural Association demanding that it cease use of the “marks.” On May 31, 2013, the association sent a letter to iLink demanding that it cease use of the “marks.”

In June 2013, iLink sued the association in DeKalb County Superior Court, asserting trademark infringement. It also filed an emergency motion for an “interlocutory injunction.” Following a hearing, the trial court ruled in iLink’s favor and granted the pre-trial injunction, temporarily prohibiting the association from using the pageant names. The trial court did not prohibit the association from holding the pageants, just from using the names. The India-American Cultural Association then appealed to the state Supreme Court, arguing that under Georgia’s statutory and case law, trademark rights are acquired through use, not registration, and a party is not obligated to register its mark to obtain protection. The association claimed that because of its status as “senior user” of the marks, to issue the pretrial injunction, the superior court must have erroneously found that the association had either abandoned its rights to the trademarks or assigned them to iLink.

“But the India-American Cultural Association’s arguments are unavailing,” today’s opinion says. The purpose of an interlocutory injunction is to maintain the status quo until the case is tried and decided. “It is a stop-gap measure to prevent irreparable injury or harm to those involved in the litigation.”

Certainly it can be argued that because iLink was the last entity to hold the named pageants, “the status quo was iLink being the host of the events using the marks,” the opinion says. “But this simplistic approach does not take into account the totality of the evidence before the superior court at the time of the interlocutory injunction hearing in regard to issues of abandonment or assignment of the marks.” That evidence included copies of the state registrations of the trademarks, iLink’s advertisements promoting the pageants, and Molu’s affidavit attesting to the fact that he was told the association had discontinued any plans to conduct the pageants.

At the same time, the trial court had two affidavits from the association’s representatives disputing Molu’s account. “Thus, the evidence regarding abandonment or assignment of the marks was in dispute,” the opinion says. “And where evidence is conflicting on an issue relevant to the issuance of the interlocutory injunction, a trial court cannot be found to have abused its discretion in either granting or denying such injunction.”

“Further, the judgment of the superior court must be affirmed for yet another reason,” the opinion says. The trademarks were registered with the Office of the Secretary of State as being owned by iLink. “And while the India-American Cultural Association’s offered affidavits may have rendered in dispute iLink’s claims of abandonment or assignment of the marks, the superior court was not required to find that they had ‘overcome’ the statutory presumption of validity for the purpose of the grant of interim injunctive relief,” the opinion says.

“Accordingly, there is no basis to overturn the superior court’s grant of interlocutory injunctive relief to iLink.”

Justice Harold Melton writes in a concurrence that while the general purpose of a pretrial injunction is to maintain the status quo, there are other factors a trial court must consider, and the transcript shows that each factor was indeed considered.

“First, with regard to iLink’s injury, there was argument presented that iLink’s 2013

pageant would suffer loss of contestants and revenue if it could not solely use the service marks in issue,” the concurrence says. Second, the trial court weighed the harms iLink and the association would suffer and “determined that iLink’s for-profit business would have more to lose than the association’s non-profit community organization.” Third, based on iLink’s registration of the trademarks and its sworn contention that the association had expressed it no longer intended to use the marks, “it cannot be said that the trial court would have abused its discretion in any determination that iLink had a substantial likelihood of succeeding on the merits.” Fourth, “by finding that both pageants could be held, the trial court’s ultimate ruling limited any possible disservice to the public.”

Nevertheless, as the trial court noted, “the interlocutory injunction is just a temporary remedy based on limited facts,” the concurrence says. “A trial remains necessary to determine the ultimate ownership in the disputed marks.”

Attorneys for Appellant (Association): William Brewster, Wab Kadaba, Allison Roach, Nichole Chollet

Attorneys for Appellee (iLink): Michael Higgins

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

- * Christopher As Bradshaw (Clayton Co.) **BRADSHAW V. THE STATE (S14A1365)**
- * Eric Tramaine Heard (Clayton Co.) **HEARD V. THE STATE (S14A1925)**
- * Jarquez Jones (Fulton Co.) **JONES V. THE STATE (S14A1702)**
- * Steve McDonald (Seminole Co.) **MCDONALD V. THE STATE (S14A1342)**
(The Supreme Court has upheld McDonald’s convictions and life prison sentence, but is sending the case back for resentencing based on the judge’s inaccurate merging of three of the convictions into the malice murder verdict and the incorrect merging of felony murder into malice murder. Instead, the felony murder counts should have been thrown out or “vacated.”)

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

- * Joseph Citron **IN THE MATTER OF: JOSEPH CITRON (S15Y0512)**

The Court has accepted a petition for voluntary discipline and ordered the **public reprimand** of attorney:

- * Jeffrey L. Sakas **IN THE MATTER OF: JEFFREY L. SAKAS (S14Y1825)**