



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

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THE STATE V. RANDLE (S15G0946)

The Supreme Court of Georgia has unanimously upheld a ruling that a man who pleaded guilty 22 years ago to child molestation may be removed from the state's sex offender registry.

According to the facts of the case, in 1993, Blake Randle pleaded guilty in **Coweta County** to one count of child molestation for touching the penis of a 10-year-old boy when Randle was 19 years old. He received an 8-year sentence with the first three to be served in confinement followed by five years on probation. As a result of his conviction, he was required to register as a sex offender. Randle served his sentence and was released from probation in 2001. In 2013, Randle filed a petition for release from the sex offender registration requirements. Under Georgia Code § 42-1-19, a defendant may file such a petition if 10 years have elapsed since he completed his sentence, and if six criteria are met under another statute, § 17-10-6.2. Among the criteria is one that states the victim did not suffer "any intentional physical harm during the commission of the offense." At issue in this case is the interpretation of the phrase "intentional physical harm."

The trial court conducted a hearing where the evidence showed Randle had committed no other crimes, had completed all required sex offender treatment, had committed no probation violations, and had done "well while on probation and as well in his treatment." By then 42 years old, Randle testified he had had physical custody of his 14-year-old daughter for five years, had been working in the technology field for 15 years, provided for himself and his daughter, and had continued treatment after his probation ended because he "felt that it was very helpful." Randall testified that he wanted to be removed from the sex offender registry so that his daughter would

not be bullied by those who might find his registration online and because signs with his picture identifying him as a sex offender who “lives here” had been left in his yard, according to briefs filed in the case. Under cross-examination, Randle admitted that given his victim’s age, the child likely had not liked the touching. Following the hearing, the trial judge granted Randle’s petition, noting that while he, the judge, had never released someone from the sex offender registration requirements, Randle’s offense had occurred 21 years earlier, there had been no other incidents since then, and based on his testimony, the judge was “convinced that this will never happen again.”

The State then appealed to the Court of Appeals, arguing that Randle’s act of touching the child’s genitals necessarily resulted in the victim suffering “intentional physical harm,” and therefore prevented Randle’s release from the registration requirements under Georgia Code § 17-10-6.2. But in a split 4-to-3 decision, the Court of Appeals disagreed and upheld the trial court’s ruling, finding that the term, “intentional physical harm,” “contemplates conduct that goes beyond offensive and unwanted touching and involves the intentional infliction of physical pain or injury upon the victim.” The dissent, on the other hand, concluded that intentional physical contact of any type constitutes “intentional physical harm” that would preclude an offender’s removal from the registry. The State then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in its interpretation of “intentional physical harm.”

“The issue before us is whether the phrase ‘intentional physical harm’ in this context includes physical contact that, while offensive and unwelcome, resulted in no physical pain or injury,” today’s opinion says. “We conclude that it does not, and we therefore affirm the Court of Appeals in its affirmance of the superior court’s order granting Randle’s petition for removal from the sex offender registry.”

“At the crux of this dispute is the meaning of the word ‘harm,’” which is commonly defined as “damage,” “injury,” or “hurt,” the opinion says. “In common parlance, thus, the word ‘harm’ indicates not any contact but, rather, injurious contact.”

In several statutes and court cases, “both the legislature and our courts have recognized generally, albeit in a different context, that physical contact, even if uninvited or unwanted, does not necessarily equate to physical harm. We find no reason to believe that the legislature intended to disregard this distinction in the present context.”

“For the foregoing reasons, we hold that the phrase ‘intentional physical harm’...means intentional physical contact that causes actual physical damage, injury, or hurt to the victim,” the opinion concludes. “We therefore affirm the judgment of the Court of Appeals.”

Attorneys for Appellant (State): Peter Skandalakis, District Attorney, Robert Mooradian, Asst. D.A.

Attorney for Appellee (Randle): Christa Kirk

NORMAN V. THE STATE (S14A1525)

The Georgia Supreme Court has unanimously upheld the murder and necrophilia convictions of a man who admitted to **DeKalb County** police officers that after he strangled and killed a woman, he stayed with the deceased victim and had sex with her corpse.

In his appeal, Edward Norman’s attorney argued that the evidence did not support his necrophilia conviction. But in today’s opinion, **Justice David Nahmias** writes for the Court that

Norman's "confession and its corroboration was legally sufficient to authorize a rational jury to find Appellant guilty beyond a reasonable doubt of necrophilia."

According to the facts at trial, on Sept. 8, 2011, DeKalb County police responded to the United Inn & Suites on Memorial Drive in Decatur and found Monique Flores-Owens dead in a hotel room. She had been dead at least a day or two and was lying on the floor covered by a sheet, with a pillow under her head and two Bibles and other items placed on top of her body. The room was registered in Edward Norman's name. A few days later, police found Norman and brought him in to be interviewed.

In an hour-long audiotaped interview, which was later played for the jury, Norman gave the following account of how Flores-Owens wound up dead in his room. He said he had met Flores-Owens Sept. 5, 2011, at a downtown Atlanta MARTA station, and she had agreed to accompany him back to his room at the United. There they smoked crack cocaine, drank beer, undressed, and Norman attempted to perform oral sex on Flores-Owens. She resisted, and a noisy struggle ensued, causing the guests in adjacent rooms to knock on the door and ask if everyone was all right. Norman answered the door naked and demanded to be left alone, slamming the door on them. He then continued to struggle with Flores-Owens. He initially smothered her with a pillow, then wrapped a cord around her neck, and finally manually strangled her to death. Norman said he stayed in the room for about two days, during which he spoke to the deceased victim and had sex with her corpse. Before leaving the room, he said he covered her with a sheet and put two Bibles on her body, along with other personal effects of hers.

At trial, the medical examiner testified that the cause of death was manual strangulation and that the body had been in the room at least a day or two by the time the police found it. The defense theory was that Norman was not guilty by reason of insanity, but the defense called no expert or other witnesses. On Dec. 5, the jury convicted Norman of malice murder and necrophilia, and he was sentenced to life for the murder and an additional 10 years for the necrophilia.

In his appeal, Norman's attorney did not dispute the sufficiency of the evidence supporting his murder conviction but did dispute the evidence for necrophilia, arguing that it was "uncorroborated and equivocal."

"We disagree," today's opinion says. Under Georgia statutory law, a "confession alone, uncorroborated by any other evidence, shall not justify a conviction." In this case, however, "the State presented evidence corroborating Appellant's confession in many particulars."

The high court has also rejected Norman's argument that his statements that he had had sex with Flores-Owens after killing her were "vague, illusive, and contradictory." Norman "spontaneously confessed to 'necrophilia' without prompting by the interviewing officers, and he went on to mention sex with the dead victim several more times during the interview," the opinion says. When they asked him if he'd had sex with her after she was dead, he said "yes," and twice later he said that what he'd done to her made him a "necrophile."

"Judgment affirmed," the opinion says. "All the Justices concur."

Attorney for Appellant (Norman): Cynthia Harrison

Attorneys for Appellee (State): Robert James, District Attorney, Tamara Ross, Dep. Chief Asst. D.A., Lenny Krick, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Vicki Bass, Asst. A.G.

MOSLEY, SOLICITOR GENERAL ET AL. V. LOWE (S15A1722)

The Supreme Court of Georgia has ruled against **Clayton County**'s Solicitor General and Sheriff by upholding a superior court ruling that granted a woman's request to expunge from public view records of her 1996 arrest for simple assault.

According to the facts, in February 1996, Belinda Lowe was arrested by the Clayton County Sheriff's Office and charged with simple assault after the alleged victim, a woman, filled out and signed an Application for Criminal Arrest Warrant. However, at trial, the alleged victim, who was the prosecution's only witness, failed to appear. On May 28, 1996, the State Court granted the prosecution's motion to dismiss, or "Nolle Prose," the charge because the witness had "failed to appear."

In August 2014, a little more than a year after the legislature amended the state's "criminal history record information" statute (Georgia Code § 35-3-37), Lowe submitted an application to the Sheriff's Office seeking to restrict her arrest record. Solicitor General Tasha Mosley denied Lowe's restriction request, stating the denial was based in part "upon the subsequent arrests in 1997 and 2009 for violent offenses." On Nov. 13, 2014, Lowe petitioned the Clayton County Superior Court asking the court to review the denial of her restriction request, as authorized under § 35-3-37. Mosley and Sheriff Victor Hill opposed restricting her arrest records, arguing that while the recently amended version of the law expanded the grounds for restricting criminal history record information, it did not apply retroactively to Lowe's 1996 arrest. However, the trial court disagreed and ruled in Lowe's favor, finding that the legislature did intend that the record restriction statute, as amended, "should apply to arrests occurring before [the statute's effective date]." The trial court found the amended statute could be applied retroactively to Lowe's 1996 arrest record, and the court ordered the record restricted. The Solicitor General and Sheriff then appealed to the state Supreme Court.

"Because the statute itself makes clear that it does apply to information regarding arrests pre-dating the amendments, and because such application presents no constitutional problem, we hold that the amendments to the statute do apply here," says today's unanimous opinion, written by **Justice Carol Hunstein**. "Accordingly, we affirm the judgment of the superior court."

The opinion points out that the amended version of § 35-3-37 "was enacted as part of a comprehensive criminal justice reform effort spearheaded in 2011 by Governor Nathan Deal." The new version specifically gives individuals the right to automatic restriction of their criminal history information involving most arrests that result in no convictions, such as Lowe's 1996 arrest. The statute addresses information predating the effective date of the amendments, stating that "as to arrests occurring before July 1, 2013, an individual may, in writing, request the arresting law enforcement agency to restrict the criminal history record information of an arrest."

The effect of the amendments "is to expand the right of individuals to restrict access to their criminal history record information and, concomitantly, to limit the right of the general public to gain access to such information," today's opinion says. "The only right that has been impaired in any way is the public's right to access information. Because such a right is a public right, incapable of vesting in any particular person, the modification of this right poses no constitutional problem."

The opinion concludes that "Lowe is eligible for record restriction under the current statute, and her request should have been granted."

Attorneys for Appellants (Mosley): Jack Hancock, A. Ali Sabzevari
Attorneys for Appellee (Lowe): Brenda Smeeton, Michele Young

WIGGINS V. THE STATE (S15A1729)

The Supreme Court of Georgia has reversed the murder conviction of a man sentenced to spend the rest of his life in prison for shooting and killing a woman in **Muscogee County** as she stood outside her apartment.

In today's unanimous opinion, written by **Chief Justice Hugh Thompson**, the high court has ruled that Ulysses Wiggins, who was sentenced to life without parole for the 2008 murder of Catherine Walker, had clearly stated before trial that he wanted to represent himself, "pro se." But the trial court failed to honor Wiggins' assertion of his right to represent himself and failed to hold the hearing required to ensure that a defendant understands the consequences of exercising that constitutional right. "His convictions, therefore, must be reversed," today's opinion says.

According to the facts, in 2008, Wiggins had been living with his girlfriend, Valorice Caples, and her nephew, Octavious Short, for several years. Caples considered herself Wiggins' common-law wife. But on Dec. 15, 2008, she moved out of their apartment when Wiggins' behavior changed and he became abusive. The following day, Caples and her friend, Carolyn Senior, were getting into a car to leave the apartment complex where Caples' mother lived when Wiggins grabbed Caples' shoulder and pulled her out of the car. Senior intervened and the three got into an altercation, attracting the attention of bystanders. Senior swung at Wiggins with an umbrella. Eventually, a group of teenagers, prompted by Caples' nephew, chased Wiggins back to his home a few blocks away. Once home, Wiggins retrieved a gun and started shooting. He chased the teens back to the apartment complex where he again confronted Caples, threatening to kill her. Again, someone broke up the altercation and Caples and her friend were able to run away. According to witnesses, Wiggins continued to run around the apartment complex, eventually encountering Catherine Walker, whom he shot and killed as she stood outside her apartment. Wiggins fled on foot, but responding officers were able to arrest him as he attempted to flee the scene. No weapon was ever recovered. Wiggins denied shooting Walker, claiming she had been shot by someone else from an elevated position.

Three months before his trial was to begin, Wiggins' attorney, Pete Quezada, suffered a heart attack. Believing that Quezada blamed him for causing the attack, Wiggins wrote a letter to the trial court, stating: "What I am asking for is a chance to come before the court. I am more than ready to defend myself...I cannot allow Mr. Quezada to represent me." No further action was taken by the trial court, and Quezada remained as Wiggins' attorney. Following a one-day bench trial, the judge found him guilty of all charges, including murder and possession of a firearm by a convicted felon, and sentenced Wiggins to life plus five years in prison without parole. When his motion for a new trial was denied, Wiggins then appealed to the Georgia Supreme Court.

In today's opinion, "we find the evidence was sufficient to enable a rational trier of fact to find appellant [i.e. Wiggins] guilty beyond a reasonable doubt of the crimes for which he was convicted."

However, “Because we conclude the trial court erred by failing to hold a hearing to determine whether appellant’s request to proceed pro se was knowingly and intelligently made, we reverse his convictions.”

Both the U.S. and Georgia constitutions guarantee a criminal defendant the right to an attorney and the right to self-representation. “If a defendant makes a pre-trial, unequivocal assertion of the right to self-representation, the request must be followed by a hearing to ensure that the defendant knowingly and intelligently waives the ‘traditional benefits associated with the right to counsel’ and understands the ‘disadvantages of self-representation so that the record will establish that he knows what he is doing and his choice is made with eyes open,” today’s opinion says, citing the U.S. Supreme Court’s 1975 decision in *Faretta v. California*.

The trial judge correctly concluded that Wiggins had unequivocally asserted his constitutional right to self-representation. Nevertheless, the judge denied Wiggins’ motion for new trial, finding that because Wiggins did not renew his request at the time of trial, it was reasonable to “assume that [appellant] no longer entertained notions of representing himself.”

“Appellant’s request to proceed pro se was virtually ignored by both the trial court and counsel prior to trial, and relying only on appellant’s silence at the start of trial, the trial court ‘assumed’ appellant had waived his previously asserted right,” the opinion says. Because there was no evidence that Wiggins wavered in his desire to proceed pro se, “we find that appellant’s mere silence was insufficient to establish a knowing and intelligent waiver of his already invoked right to self-representation.”

“The trial court’s failure to engage in the required *Faretta* colloquy and failure to rule on appellant’s unequivocal request amount to a violation of his constitutional right to self-representation,” the opinion concludes. “Judgment reversed. All the Justices concur.”

Attorney for Appellant (Wiggins): Long Dai Vo

Attorneys for Appellee (State): Julia Slater, District Attorney, Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Scott Teague, Asst. A.G.

HAYES V. THE STATE (S15A1511)

The Georgia Supreme Court has upheld the convictions and life prison sentence David O. Hayes received in **Cobb County** for his role in the 2007 shooting death of Justin Brown. Hayes is appealing his convictions and sentence to life plus 35 years in prison, arguing that the evidence is insufficient to convict him of the murder of Brown, the aggravated assaults of two others, and his membership in a gang in violation of the Georgia Street Gang Terrorism and Prevention Act.

In today’s unanimous opinion, however, the high court disagrees. “We conclude that the evidence adduced at trial was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Hayes was guilty of the crimes of which he was convicted,” **Justice Keith Blackwell** has written for the court.

According to the evidence at trial, on Aug. 1, 2007, Hayes and four of his friends decided to “hit a lick,” which is street lingo meaning to commit robbery. One of Hayes’ friends and co-defendants – Muhammad Abdus-Salaam – suggested they rob Dylan Wattecamps, whom he knew from high school and who lived at an apartment complex in Smyrna. Several days earlier, Abdus-Salaam and Wattecamps had gotten into a dispute over marijuana Abdus-Salaam was hoping to purchase from Wattecamps. Abdus-Salaam knew Wattecamps had drugs and money in his apartment. That night, all five men met at Abdus-Salaam’s home, then left in two vehicles, a

Chevrolet pickup truck driven by Hayes and a white Honda Accord driven by co-defendant Milton Blackledge. Blackledge had a gun, and Hayes gave his gun, a .380 caliber pistol, to co-defendant Miracle Nwakanma. Because Wattecamps' apartment complex had a security gate, Hayes called a co-worker who lived at the complex and asked her to let them in under the pretense they were attending a party. She told the front gate to let them in, and while four of the five drove into the complex, Hayes remained parked across the street in his truck. The four then discovered that Wattecamps was having a party celebrating his 21st birthday and had about 10 guests at his apartment. They discussed whether they should proceed with the robbery, but decided to go ahead. At that point, Nwakanma gave the gun he was carrying to another co-defendant, Louis Francis, so as they headed up the stairs toward Wattecamps' apartment, Blackledge and Francis held the weapons. As they reached the apartment, a partygoer opened the door to come outside for a smoke. The four men panicked and Blackledge hit the partygoer in the face, knocking him to the ground. Wattecamps heard the commotion and came outside, where he found his friend on the ground. Justin Brown and two other friends of Wattecamps were just arriving at the party and were in the parking lot when Wattecamps yelled at them to "get them." Brown and his friends saw the four men running down the steps and started to chase them. As they fled, Blackledge and Francis pulled their guns and began firing backwards at the pursuers. Brown was shot once in the chest, striking his heart and killing him. Meanwhile, Nwakanma and the others jumped into Hayes' waiting truck and fled. Surveillance cameras showed the two vehicles that were used the night of the murder, and through cell phone records, investigators eventually identified the five suspects.

All five were indicted and charged with the murder of Justin Brown, as well as other crimes including conspiracy to commit armed robbery, aggravated assault, gun charges, and violation of the Georgia Street Gang Terrorism and Prevention Act. Following a joint trial in May 2009, Hayes, Nwakanma, Francis, and Blackledge were convicted and sentenced to life plus 35 years in prison. Abdus-Salaam testified against the other four and eventually pleaded guilty to reduced charges. He was sentenced to 30 years, with the first 15 to be served in custody. This appeal involves Hayes. (The Supreme Court has upheld the convictions and sentences of Nwakanma and Francis; Blackledge's is pending.)

On appeal, Hayes first argues that the evidence does not prove that MPRC 300 was a "criminal street gang" that is outlawed by the state's Street Gang Terrorism and Prevention Act (Georgia Code § 16-15-1). The Act defines a gang as "any organization, association, or group of three or more persons associated in fact, whether formal or informal which engages in criminal gang activity." Criminal gang activity is defined as any criminal offense involving violence or the possession or use of weapons.

In today's opinion, the Court rules that evidence of the men's plan to commit robbery "was proof of their existing, ongoing criminal activity." According to the evidence, which included expert testimony by a qualified law enforcement officer knowledgeable about gang activity, MPRC 300 stood for "Money Power Respect Click" and 300 stood for the first three digits of zip codes in Smyrna where the gang had a presence. "MPRC 300 was a hybrid gang, meaning that it was less tightly knit than traditional gangs, covered a broader area, and included persons who had relocated, were also members of different gangs, or were less closely associated with the gang than others were," the opinion says. All of the defendants had gang-member related tattoos. Hayes' tattoo on his back said MPRC 300. The night of the crime, before leaving

for Wattecamps' apartment, the five defendants gathered at Francis' apartment where they talked more about the robbery, got "amped up," and in an event called a "jumpoff" or a "freak," had sex with a woman who had tattoos on her body that said "Money Power Respect Click 300" and "1st Lady."

"This evidence showed that the defendants at least informally associated with one another in criminal gang activity by conspiring to commit armed robbery before they ever left for Wattecamps' apartment, and the jury certainly could have interpreted their actions at Francis' apartment as their way of claiming affiliation with 'MPRC 300,'" today's opinion says. While Hayes argues that the robbery and murder were not intended to further the interests of the gang, as opposed to the individuals involved, the evidence of Hayes' association with the group known as MPRC 300, as well as his participation in the group's activities before and during the crimes says otherwise. "That evidence implies that he had the specific intent of furthering the criminal purposes of MPRC 300 by committing the violent offenses of conspiracy to commit armed robbery and aggravated assault in order to obtain money, power, and respect for MPRC 300 and its members in the Smyrna area."

The Court has also rejected Hayes' argument that the evidence was insufficient to sustain his convictions for the murder of Brown and the aggravated assault of his two friends. "Construing the evidence most strongly in support of the verdict, the jury was authorized to find that Blackledge and Francis attempted to commit violent injuries to the persons of their pursuers...by intentionally firing guns at them without justification – striking and killing Brown – and that Hayes was a party to these aggravated assaults and the felony murder of Brown," the opinion says.

Attorney for Appellant: Adam Hames

Attorneys for Appellee (State): D. Victor Reynolds, District Attorney, Jesse Evans, Dep. Chief Asst. D.A., Amelia Pray, Asst. D.A., B. Martin First, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.

CHURCHILL V. THE STATE (S15A1487)

The Georgia Supreme Court has unanimously upheld the murder and cruelty to children convictions Hodari Churchill received in **Irwin County** for killing his girlfriend's 3-month-old baby girl.

Churchill appealed his convictions and life prison sentence for fracturing the baby's skull by slamming her head "into something hard," arguing the evidence was insufficient to convict him and the judge erred by allowing in photographs of earlier injuries to the baby.

But the high court disagrees, finding no errors and ruling in an opinion written by **Justice Harold Melton** that the "evidence was sufficient to enable a rational trier of fact to find Churchill guilty of felony murder beyond a reasonable doubt."

According to the facts, Jada McClain was born prematurely in September 2001, and she remained in the hospital several weeks following her birth. On Nov. 16, 2001, shortly after coming home, Jada stopped breathing while her mother, Tausha McClain, was in the shower. Churchill, who lived with the baby's mother, Jada, and Tausha's 7-year-old daughter, had been caring for the baby when he interrupted Tausha's shower and told her Jada had stopped breathing. Tausha ran into the living room where she found the infant limp and not breathing. After asking Churchill to do something to make her breathe, he began to perform CPR and the

baby resumed breathing. Tausha called for an ambulance, and Jada was transferred to the hospital where she remained for 48 hours. While she was in the hospital in Macon, both Tausha and Churchill were taught the proper way to perform CPR on a premature baby. As part of the Health Department's High Risk Infant Follow-Up, a nurse subsequently visited the residence at least four times to monitor Jada's development. She noted that the baby was gaining weight and thriving during her last visit to the family's home, which was the week before Christmas 2001.

The morning of Dec. 23, 2001, Tausha left Jada alone at home with Churchill while she went to church with her sister and brother-in-law. When she left, the baby was "fine" and "smiling." Sometime before noon, another of Tausha's sisters called the home and while speaking to Churchill, heard Jada in the background making a "high-pitched screaming cry" she had never heard the baby make. An hour or two later, Tausha's mother visited her daughter's home. Churchill answered the door and handed her the baby, who was not breathing. He told her he had left the baby on the couch while he was fixing her a bottle and that when he returned, she was not breathing. The two then drove Jada to Irwin County Hospital. When they arrived, Jada had no pulse, and a nurse later testified that upon examination, she found the baby had a "bulging area" on the "soft spot" of her head. But hospital personnel succeeded in resuscitating Jada at the hospital, and they prepared to fly her with a pediatric resuscitation team to a hospital in Augusta. During the transfer, the baby's heart stopped and she never regained consciousness.

The Georgia Bureau of Investigation medical examiner who performed the autopsy found a number of head and neck injuries, including bruising, hemorrhaging, whiplash and a linear skull fracture. He concluded the injuries resulted from blunt head trauma caused by "being slammed into something hard." The autopsy also revealed the baby's ribs had been fractured three to six weeks before her death. At trial, Tausha McClain testified that Churchill had been opposed to the baby being autopsied because he thought she had died of natural causes; Tausha's sister testified that Churchill had asked Tausha to request that the autopsy be cancelled, according to briefs filed in the case.

In February 2003, the jury found Churchill guilty of murder and cruelty to children and he was sentenced to life in prison. After his request for a new trial was denied, he appealed to the state Supreme Court, arguing in part that the trial court erred by admitting "unduly prejudicial" autopsy photos of Jada's broken ribs to show alleged prior abuse of the baby by Churchill.

"However, as we have previously explained, 'A photograph that depicts the victim after autopsy incisions... is admissible when necessary to show some material fact which becomes apparent only because of the autopsy,'" today's opinion says, quoting the Georgia Supreme Court's 2013 decision in *Norton v. State*. "Here, the photographs in question were relevant to show prior difficulties between Churchill and Jada, and this fact only became apparent as a result of the autopsy." The medical examiner testified that Jada's earlier broken ribs which occurred around the time she stopped breathing the first time, were inconsistent with fractures caused by a person administering CPR, as Churchill claimed. Rather they were evidence of abuse, and the medical examiner testified the broken ribs could have caused the baby to stop breathing.

"Having shown no reversible error by the trial court, Churchill's claim that the trial court erred by denying his motion for new trial is without merit," the opinion concludes. "Judgment affirmed."

Attorney for Appellant (Churchill): James Walker

Attorneys for Appellee (State): C. Paul Bowden, District Attorney, Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Aimee Sobhani, Asst. A.G.

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

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| * Carl Ray Adams (Laurens Co.) | <u>ADAMS V. THE STATE (S15A1825)</u> |
| * Fernando S. A. Collymore (Henry Co.) | <u>COLLYMORE V. THE STATE (S15A1509)</u> |
| * Lamar Gates (DeKalb Co.) | <u>GATES V. THE STATE (S15A1407)</u> |
| * James McGuyton (McDuffie Co.) | <u>MCGUYTON V. THE STATE (S15A1688)</u> |
| * Kelly Roberts (Richmond Co.) | <u>ROBERTS V. THE STATE (S15A1409)</u> |
| * Joshua Samuel Simpson (Walker Co.) | <u>SIMPSON V. THE STATE (S15A1365)</u> |
| * Tariq Smith (Fulton Co.) | <u>SMITH V. THE STATE (S15A1703)**</u> |
| * Cortez Tye (Fulton Co.) | <u>TYE V. THE STATE (S15A1522)***</u> |
| * Roosevelt Watson (Screven Co.) | <u>WATSON V. THE STATE (S15A1683)</u> |
| * Kevin Welch (Fulton Co.) | <u>WELCH V. THE STATE (S15A1393)****</u> |

* The Supreme Court has upheld Simpson’s murder conviction and life prison sentence, but it has thrown out his 20-year sentence for aggravated assault, which was the underlying felony of his felony murder conviction. It should have been merged into the murder conviction for sentencing purposes.

** The Supreme Court has upheld Tariq Smith’s murder conviction and life prison sentence, but in merging two felony murder counts into one murder count for the purpose of sentencing Smith, the trial court erred by failing to sentence Smith for attempted armed robbery and the unlawful possession of a firearm by a convicted felon, which were the underlying felonies of those two merged counts. Therefore, the case is being returned to the trial court for proper sentencing.

***While the Supreme Court has upheld Cortez Tye’s murder conviction and life prison sentence, it is sending the case back to the trial court for resentencing. The trial court erred in imposing a life sentence for each of two felony murder counts – one while in the commission of a robbery and one while in the commission of aggravated assault. Tye may not be sentenced on both felony murder counts when only one person was killed as that would improperly subject him to multiple punishments for one crime. As to the armed robbery and aggravated assault counts underlying the two felony murders, he also cannot be sentenced for both and one will have to be merged into the other for sentencing purposes.

****The Supreme Court has upheld Kevin Welch’s murder conviction and life prison sentence, but it is sending the case back to the trial court to additionally sentence him for possession of a firearm by a convicted felon. The trial court erred in merging that count into the malice murder count for sentencing purposes, because such a merger is required when two counts are proved by the same evidence. Here the two counts required different evidence to prove them and Welch therefore must be sentenced for both crimes.

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted the **voluntary surrender of license** from attorney:

* Dianne Cook **IN THE MATTER OF: DIANNE COOK (S16Y0241)**

The Court has accepted a petition for voluntary discipline and ordered the **six-month suspension with conditions for reinstatement** of attorney:

* Nakata S. Smith Fitch **IN THE MATTER OF: NAKATA S. SMITH FITCH (S16Y0079)**

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

* Nicholas Pagano **IN THE MATTER OF: NICHOLAS PAGANO (S16Y0126)**

The Court has ordered the **reinstatement to the practice of law in Georgia** of attorney:

* Tony C. Jones **IN THE MATTER OF: TONY C. JONES (S16Y1626, S13Y0138, S15Y1641)**