

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

LEILANI MAREE SIMON

SPCR22-03364-J6

State's Response to Defendant's Special Demurrer to the Murder Charges

The Defendant is charged with murdering her twenty-month-old son, Quinton Simon; with concealing Quinton's death by discarding his body in a dumpster, the contents of which were then deposited at a local landfill; with falsely reporting his disappearance as an abduction; and with telling investigators a series of retreating lies, moving from one lie to the next only as each lie became untenable in the face of additional information uncovered by law enforcement.

Because the ins-and-outs of waste management are perhaps not common knowledge, more specificity as to what happened to Quinton after the Defendant discarded him in the dumpster might be illuminating. Hours after the Defendant had discarded Quinton's body in the dumpster, the hydraulic forks of a front-loading garbage truck lifted up the dumpster and dumped its contents, including Quinton, into the large box that constitutes the back of the truck. Then, a powerful compactor built into the truck compacted the contents of the box.¹ This powerful compacting action is desirable so that trucks can collect as much garbage as possible before having to visit the landfill. Eventually, the truck disgorged its load at the "trash basin" of a local landfill. (A trash basin is a designated point at which all trucks entering the landfill dump their garbage. It is not the final destination for the garbage; rather, it is more like a staging area.)

¹ A reference publication from the General Services Administration says that the typical "compaction ratio" for front-loading garbage trucks is six to one.
https://www.gsa.gov/cdnstatic/Waste_Management_Desk_Guide.pdf

A bulldozer then shoved the heaped garbage some 300 feet from the trash basin to a “cell.” (A cell is a designated area to which garbage heaped at the trash basin is being routed at a given time. This is not a neat process. It requires repeated trips by the bulldozer and involves, in addition to shoving, some amount of spreading, smearing, etc.) Once at the cell, the garbage—and Quinton—were compacted by a roughly fifty-ton machine that looks something like a steamroller, but with rollers that are studded rather than smooth.

Then there was the search. Once law enforcement had identified the cell in which Quinton was likely to be located, they set about searching it. This process consisted of excavators scooping garbage out of the cell and loading it into dump trucks, the dump trucks then unloading the garbage at an open area known as a “search deck,” the garbage then being spread out into an even layer on the search deck, law enforcement then painstakingly combing through the garbage, and the garbage then being cleared from the search deck to make room for the next load. This process was repeated day after day, load after load, ton after ton until these efforts finally met with grim success.

All of which is to say: Quinton’s body went through a lot. As a direct result of the Defendant’s deliberate choice not only to conceal Quinton’s death but to do so specifically by subjecting him to the violence of the waste management system, law enforcement did not discover his remains—not his intact body, but his remains—for more than a month after his disappearance.² Naturally, Quinton’s body had by then undergone severe trauma and decomposition. To be clear, it is not as though law enforcement found Quinton’s remains in a single location on the search deck; rather, they were dispersed across it. A bone here, a bit of tissue there. Quinton’s cause of death therefore was not apparent from lay observation of his

² Even then, Quinton’s remains were only discovered at all because of the heroic doggedness of law enforcement.

remains, and while forensic analysis is ongoing, no cause of death has yet been ascertained forensically and likely will not ever be. Nor has other evidence conclusively established Quinton's specific cause of death. No one saw the Defendant murder Quinton (as filicide tends to be a clandestine endeavor), and the Defendant's various statements to law enforcement and to the news media as to how Quinton came to be dead were an inscrutable and inculpatory mish-mash of I-don't-know, I-don't-remember, I-don't-think-I-would-do-anything-to-hurt-him, and but-if-I-did-I-will-take-responsibility.

The state of the evidence as to Quinton's cause of death, then, is the fault of the Defendant and the Defendant alone. Further, her actions in disposing of his body and concealing its whereabouts indicate that her *specific intent and hope* was that Quinton would never be found at all.³ The idea seems to have been no body, no case.⁴

It is against this factual backdrop that the Defendant now moves to quash her murder charges on the grounds that they purportedly contain insufficient information as to how exactly she killed Quinton. One marvels at the brazenness. Granting the Defendant's special demurrer would be tantamount to telling the Defendant and other would-be murderers: Get rid of the body entirely—or do a good enough job trying—and the Court will reward your cunning and depravity by declaring you beyond the reach of prosecution for murder. In effect, the Defendant asks the court to validate her actions by consummating her plan.

Fortunately, this is not how it works. Under Georgia law, an indictment is not required to include any more specifics than the evidence—which, again, was shaped by the Defendant—

³ In this calculation, she appears to have underestimated the perseverance, commitment, and competence of the multi-agency law enforcement team that undertook this investigation.

⁴ Even this is not an accurate reflection of the law. *See, e.g., Hinton v. State*, 280 Ga. 811 (2006) (upholding conviction in a no-body murder case).

allows the State to allege. The indictment in this case is proper given the information available to the State, so the Court should reject the Defendant's gambit.

First, the Defendant argues that the three murder charges are deficient for not specifying Quinton's cause of death. However, it has long been the law that "[a]n indictment failing to specify the cause of death is sufficient 'when the circumstances of the case will not admit of greater certainty in stating the means of death.'" *Phillips v. State*, 258 Ga. 228, 228 (1988) (quoting *Hicks v. State*, 105 Ga. 627 (Ga. 1898), which itself quoted a Massachusetts case from 1850 for this proposition). This is a sensible rule, because "[t]he State cannot be more specific than the evidence permits." *State v. Wyatt*, 295 Ga. 257, 262 (2014) (internal citation omitted). *See also Hinton v. State*, 280 Ga. 811 (2016) (applying this concept in the context of a no-body murder case).

Second, the Defendant argues that Count 2, felony murder predicated on aggravated assault, is deficient for not specifying the object that the Defendant used to inflict the aggravated assault. However, "the indictment is not required to identify the exact weapon or object used if the circumstances of the case do not allow such specificity." *Wyatt* at 262. Here, because "the indictment is as specific as it can be" on this point "there is no basis under [the Supreme Court of Georgia's] precedent to grant a special demurrer" *Id.* at 261.

Third, the Defendant argues that Count 3, felony murder predicated on cruelty to children in the first degree, is deficient for not specifying the manner in which the Defendant caused Quinton cruel and excessive physical pain. However, here again "[t]he State cannot be more specific than the evidence permits." *Wyatt* at 262.

In demanding more specific information than the State can allege in light of her actions, the Defendant cites *Stinson v. State* for the following proposition:

In order to satisfy due process when an indictment charges a compound felony such as felony murder, the count charging the compound offense must contain the essential elements of the predicate offense, or the indictment must contain a separate count charging the predicate offense completely or the indictment must elsewhere allege facts showing how the compound offense was committed.

279 Ga. 177, 178 (2005).

But this rule is phrased in the disjunctive. An indictment that takes any one of the three listed approaches is sufficient to satisfy due process. Here, the felony murder counts contain the essential elements of the predicate offenses. In the end,

[t]he true test of the sufficiency of an indictment to withstand a special demurrer is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently appraises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent [s]he may plead a former acquittal or conviction.

Wyatt at 260 (internal citation and punctuation omitted).

Here, the murder charges put the Defendant on notice that the State intends to prove that she intentionally killed Quinton (Count 1, malice murder); that, even if she did not specifically intend to kill Quinton, she nevertheless did kill him by way of an aggravated assault with an object⁵ that caused him serious bodily harm (Count 2, felony murder predicated on aggravated assault); and that, in the course of causing his death, she caused him cruel and excessive physical pain (Count 3, felony murder predicated on cruelty to children). Under the circumstances of this case, and under the law, nothing more is required.

⁵ The State notes that under Georgia law, the meaning of the word “object” in this context is broad. *See, e.g., Reese v. State*, 303 Ga. App. 871, 872–73 (2010) (“Examples of normally non-offensive deadly objects which have been used in a manner as to support convictions of . . . aggravated assault are: a beer bottle, a ceramic statue, a pocketknife, fists, and even a pillow and sheets.”) (internal citation omitted); *Boyd v. State*, 289 Ga. App. 342, 345 (2008) (hands, when used to strangle); *Goodrum v. State*, 335 Ga. App. 831, 832 (2016) (same); *Lizana v. State*, 287 Ga. 184, 185 (2010) (hands and feet, when used to strike); *Eady v. State*, 182 Ga. App. 293, 295 (1987) (pillow, when used to smother).

Further, this responsive filing is itself sufficient to resolve the issue; there is no requirement that the State present evidence to overcome a special demurrer of this nature. As Justice Nahmias explained in *Wyatt*,

Wyatt also argues that if the State contends that [certain facts] are unknown, it must support those contentions with evidence at a pretrial hearing [T]he only way for the State to truly *prove* that it cannot specify [certain facts] would be to present *all* of the evidence the State has in order to show that the evidence does not allow [it]—that is, to make a full presentation of the State's evidence before actually trying the case. Nothing in our cases dealing with material elements that are alleged to be unknown has indicated that we would impose such an impractical requirement. *See Gardner v. State*, 216 Ga. 146, 146 (1960) (not requiring a pretrial evidentiary hearing in an aggravated assault case where the weapon used was alleged to be unknown); *Johnson v. State*, 186 Ga. 324, 333 (1938) (same). *See also Hinton*, 280 Ga. at 815–816 (same where the indictment alleged that the cause of death was unknown); *Phillips*, 258 Ga. at 228 (same). Moreover, a requirement of pretrial proof would contradict the principle that in reviewing demurrers, the allegations in the indictment are taken as true, which would include an allegation that a matter was unknown to and thus unable to be specified by the grand jury. *See Lowe v. State*, 276 Ga. 538, 539 (2003) (explaining that the court must take the allegations in an indictment as true when evaluating a demurrer). *See also Miller v. State*, 211 Ind. 317 (1937) (“The sufficiency of the facts before the grand jury to justify the charges in the indictment cannot be questioned, and the recitals concerning knowledge, or want of knowledge, of the names of parties or other matters must be accepted as true.”).

State v. Wyatt, 295 Ga. 257, 267–68 (2014)

Respectfully submitted this 14th day of July, 2023.

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CERTIFICATE OF SERVICE

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This 14th day of July, 2023.

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