

SUPREME COURT OF GEORGIA

Lee v. State

S25A1002 (Ga. Dec. 9, 2025) · No. S25A1002 · Decided December 9, 2025

SUMMARY

The Supreme Court of Georgia affirmed Kevin James Lee’s convictions and sentence for malice murder, while noting that the trial court had set aside his conviction for concealing the death of another. The court held that circumstantial evidence supported the murder conviction, found no abuse of discretion in admitting challenged testimony under Georgia’s residual hearsay exception or in replacing an absent juror, and rejected Lee’s ineffective-assistance claims concerning speedy-trial proceedings and a plea offer. The opinion addresses Georgia statutory circumstantial-evidence standards, hearsay, juror substitution, constitutional speedy-trial claims, and the Strickland ineffective-assistance standard.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	McMillian, Justice
JURISDICTION	Supreme Court of Georgia
DECIDED	December 9, 2025
DOCKET	S25A1002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lee appealed from his convictions for malice murder and concealing the death of another, the trial court's order setting aside the latter conviction and sentence, and the denial of the remainder of his amended motion for new trial.
STANDARD OF REVIEW	Sufficiency of circumstantial evidence is reviewed under whether the jury's rejection of an alternative hypothesis was insupportable as a matter of law. Evidentiary rulings concerning the residual hearsay exception and the substitution of an alternate juror are reviewed for abuse of discretion. Ineffective-assistance claims are reviewed under Strickland's deficient-performance and prejudice framework.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion
PARTIES	Kevin James Lee v. The State

TOPICS

criminal procedure evidence hearsay ineffective assistance speedy trial

PRACTICE AREAS

criminal law criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether the circumstantial evidence was sufficient under OCGA § 24-14-6 to support Lee's malice-murder conviction despite his alternative-perpetrator theory.
2. Whether the trial court abused its discretion by admitting testimony under Georgia's residual hearsay exception, OCGA § 24-8-807.
3. Whether the trial court abused its discretion by excusing Juror 4 and substituting an alternate juror.
4. Whether trial counsel provided ineffective assistance by failing to file a plea in bar based on constitutional speedy-trial delay.
5. Whether trial counsel provided ineffective assistance in communicating and presenting the State's plea offer.

HOLDINGS

1. The evidence was sufficient to support Lee's malice-murder conviction because the jury was authorized to reject as unreasonable the alternative hypothesis that Cook was the killer.
2. The trial court did not abuse its discretion by admitting Story's testimony under OCGA § 24-8-807, and Lee's challenge to the testimony of Harvard and Riley failed because the record did not show that they testified to the challenged hearsay statements about Berry's relationship with Lee.
3. The trial court acted within its discretion in excusing Juror 4 and substituting an alternate because the juror's repeated tardiness and stated refusal to appear constituted good cause and a sound legal basis.
4. Counsel was not constitutionally ineffective for declining to file a constitutional speedy-trial demand or plea in bar because the decision was a reasonable strategic choice under the circumstances.
5. Counsel was not ineffective in communicating the State's plea offer because the record showed that Lee understood the offer, the risks of proceeding to trial, and that Investigator Atkins would not provide useful defense testimony, and Lee knowingly chose to proceed to trial.

KEY QUOTATIONS

“Not every hypothesis is a reasonable one, however, and the evidence need not exclude every conceivable inference or hypothesis—only those that are reasonable.” (7)

“It is well established that OCGA § 15-12-172 gives a trial court the discretion to discharge a juror and replace him or her with an alternate at any time so long as the trial court has a sound legal basis.” (14)

“As with other tactical or strategic decisions, trial counsel’s decision to file, or not, a demand for speedy trial should not be evaluated in hindsight.” (17)

FACTUAL BACKGROUND

Ann Berry disappeared in 1991 while attempting to leave her abusive relationship with Lee and take their children to her sister's home. Lee gave varying accounts of Berry's disappearance, moved away with the children shortly afterward, and left nearly all of Berry's possessions behind. Human remains discovered near the couple's former home in 2011 were identified as Berry's, and the medical examiner classified her death as a homicide. Trial evidence included testimony about Lee's abusive conduct toward Berry, the circumstances of her disappearance, and an alternative theory that Larry Cook may have been responsible.

PROCEDURAL HISTORY

A Coweta County grand jury indicted Lee in 2012 for malice murder and concealing the death of another. The trial court placed the case on the dead docket until Lee was arrested in California in 2018, after which the case was returned to active status. Following a March 2022 trial, the jury convicted Lee on both counts; the trial court later set aside the conviction and sentence for concealing the death of another because the offense was not timely and properly indicted, but denied Lee's remaining motion-for-new-trial claims. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The opinion does not reverse or formally remand. It notes that nothing in the opinion precludes the trial court on remand from entering a corrected sentencing disposition for the vacated concealing-death conviction.

CASES CITED

- Rashad v. State, 318 Ga. 199, 206 (2024)
- Nichols v. State, 292 Ga. 290, 291-92 (2013)
- Jackson v. State, 307 Ga. 770, 772 (2020)
- Brown v. State, 301 Ga. 728, 731 (2017)
- Miller v. State, 303 Ga. 1 (2018)
- Jacobs v. State, 303 Ga. 245, 248-51 (2018)
- Smith v. State, 307 Ga. 680, 686 (2020)
- Brooks v. State, 281 Ga. 14, 18 (2006)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Payne v. State, 314 Ga. 322, 328-29 (2022)
- Ford v. Tate, 307 Ga. 383, 386 (2019)
- Blocker v. State, 316 Ga. 568, 578 (2023)
- Zayas v. State, 319 Ga. 402, 409 (2024)
- Jones v. State, 296 Ga. 561, 569 (2015)

- Smith v. State, 297 Ga. 214, 217 (2015)
- Johnson v. State, 315 Ga. 876 (2023)
- Bowling v. State, 289 Ga. 881, 889-90 (2011)
- Head v. Thomason, 276 Ga. 434, 439 (2003)
- State v. Lane, 308 Ga. 10 (2020)
- North Carolina v. Alford, 400 U.S. 25 (1970)
- Robinson v. State, 322 Ga. 279, 283-84 (2025)
- Bryant v. State, 306 Ga. 687, 696 (2019)

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