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CHICAGO (jGLi) – The Georgia State Supreme Court in Atlanta affirmed Tuesday (May 31) the felony murder conviction of Filipino American Dr. Noel N. Chua for prescribing to a 19-year-old student a controlled substance, methadone, a pain medication whose presence in the “blood alone was sufficient to kill him.”

Writing a decision for a unanimous court, Associate Justice P. Harris Hines also vacated a jury-trial decision that found the 48-year-old Chua guilty of keeping a dwelling place for the purpose of using controlled substances because “there was no evidence that one of the purposes for maintaining the home was to provide the victim,” James Bazley Carter, III, “a place to use and keep controlled substances.”

This means that a “concurrent term of five years in prison” will be taken off from the life sentence imposed on Chua by the jury in the felony murder conviction affirmed by Georgia’s highest state court.

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A jury initially found Chua guilty of felony murder for Counts 3, 4, 5, 15, 16, 18 and 19 for violating the Georgia Controlled Substances Act "by distributing (prescribing) controlled substances methadone, morphine, oxycodone, oxycotin and Percocet over a period of time." ¶ The distribution was "not being for a legitimate purpose and not being in the usual course of Chua's professional practice." Chua was also found guilty of "keeping a dwelling place for the purpose of using controlled substances."

But the court merged Counts 4, 15, 18 19 into one crime of felony murder case and dismissed Count 5 for keeping dwelling place for the purpose of using controlled substances.

NOT IN USUAL COURSE OF MEDICAL PRACTICE

To prove that Chua's acts of prescribing the drugs to Carter were not in the usual course of his medical practice, the state prosecutors led by Brunswick Judicial Circuit District Attorney Jacqueline Johnson argued that "an inappropriate relationship beyond that of physician and patient had developed between Chua and Carter."

An expert had testified that Chua's course of drug treatment for Carter, from Nov. 8 to Dec. 15,

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“would be expected to create a physiological dependence in any patient, even if the patient did not have any prior addictive tendency.”

Even if Chua and his lawyer, Donald F. Samuel, asserted that the evidence demonstrates nothing more than poor performance by a physician in treatment and record keeping, the expert testimony and other evidence indicates otherwise, according to the 25-page decision that followed an oral argument last March 7, 2011.

“In view of the foregoing, we conclude that the evidence authorized the jury to find Chua guilty beyond a reasonable doubt of violating OCGA (Official Code Georgia Annotated) Sections 16-13-41. Chua contends that, even if the evidence authorized the jury to find him guilty of violating OCGA Sections 16-13-41 (f), it did not authorize a finding of guilt as to the crime of felony murder. As Chua recognizes, the State had to prove that his distribution of controlled substances as set forth in the indictment was the proximate cause of Carter’s death,” according to the decision.

“WAS NOT HONEST”

The court also found that “Chua’s acts on the evening Carter died support the conclusion that he realized his history of prescribing drugs to Carter posed a foreseeable risk of death, and that he wished to avoid consequences flowing from the risk.”

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The court also noted that Chua “was not honest with the officials who investigated Carter’s death. That evening, he told the coroner that Carter had not had any hospitalizations when in fact Chua had supervised two, including one within the past week.”

He also told a police officer that he had prescribed “methadone only” for Carter as treatment for headaches. And he did not produce the bottle from the Dec. 9, 2005 methadone prescription during the nine months between Carter’s death and his own arrest.

Although Chua asserted that the State failed to establish that the drugs fatally ingested by Carter were the same drugs that he had prescribed to Carter, and were thus the proximate cause of Carter’s death, the court said “there was no evidence that Carter had access to any methadone other than that prescribed by Chua.”

Concurring with the decision were Chief Justice Carol W. Hunstein, Presiding Justice George H. Carley, and Associate Justices Robert Benham, Hugh P. Thomson, and Harold D. Melton. Judge Daniel J. Craig was setting in for Justice David E. Nahmias, who was disqualified, for being acquainted with the case when he was still a U.S. Attorney of Atlanta.

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Carter was found dead in his bathroom of the home of Dr. Chua at the seaside city of St. Mary's

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Camden

County

on

Dec. 15, 2005

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Mr. Chua, a doctor in general medical practice and an alumnus of the Far Eastern University in the Philippines, was arrested after he was indicted by a grand jury of one count felony murder and 16 counts of violation of Georgia Controlled Substances Act, all stemming from Mr. Chua's position as physician who prescribed various controlled substances to the victim, after a nine-month investigation. # # #

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