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, May 9, 2016

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 .

GEORGIACARRY.ORG ET AL. V. ATLANTA BOTANICAL GARDEN, INC. (S16A0294)

In a decision today, the Supreme Court of Georgia has ruled in favor of GeorgiaCarry.org, which sued the Atlanta Botanical Garden for prohibiting people with Georgia weapons licenses from carrying guns on the Garden's grounds.

With its unanimous ruling, written by **Justice Carol Hunstein**, the high court has reversed part of a **Fulton County** judge's order and ruled that the court should not have dismissed the lawsuit on the grounds that it did. The case is being sent back to the Fulton County court where GeorgiaCarry's case may now go forward.

GeorgiaCarry.org is an advocacy group that supports second amendment rights to keep and bear arms. According to the facts of the case, Phillip Evans, a GeorgiaCarry member and holder of a Georgia "weapons carry license," was carrying a firearm in a holster on his waistband when he was stopped by an employee of the Atlanta Botanical Garden in October 2014 and told he could not carry his weapon at the Garden. After being detained by a security guard, he was escorted off the grounds by an officer with the Atlanta Police Department. Evans claimed that when he purchased his family's one-year membership at the Botanical Garden earlier that same month, he was also openly displaying his weapon, and no one objected, according to briefs filed in the case. The Garden's CEO later contacted Evans and told him that only police officers were allowed to have weapons at the Garden. GeorgiaCarry.org claims that it has other members who desire to carry guns when they visit the Botanical Garden, a private entity that leases its land from the City of Atlanta. GeorgiaCarry.org, along with Evans, subsequently sued the Atlanta Botanical Garden, seeking a "declaratory" judgment by asking the court for a declaration that the

Garden could not prohibit licensed individuals from "carrying weapons on property that the Garden leases from the City of Atlanta." It also sought an injunction by asking the court to prohibit the Garden from having licensed individuals arrested and prosecuted for carrying their weapons at the Garden. In response, the Garden filed a motion asking the court to dismiss GeorgiaCarry's complaint, arguing that a declaratory action may not be used to interpret a criminal statute, to compel a party from taking or not taking a specific action, or to control the enforcement of criminal laws. The trial court agreed and dismissed GeorgiaCarry.org's and Evans' claims who then appealed to the state Supreme Court.

On appeal, GeorgiaCarry first argued the trial court was wrong to dismiss its request for a declaratory judgment.

"We agree," today's opinion says.

The trial court dismissed GeorgiaCarry's petition for declaratory relief on the basis that it impermissibly required the trial court to interpret and apply a criminal statute.

"However, a declaratory judgment action is not inappropriate merely because it touches upon a question of criminal law; in fact, such an action is an available remedy to test the validity and enforceability of a statute where an actual controversy exists with respect thereto,'" the opinion says.

Here, GeorgiaCarry does not seek an advisory opinion that its proposed actions would not be criminal. Instead it seeks "a determination of whether licensed individuals may carry a weapon on the grounds of the Garden in accordance with Georgia Code § 16-11-127 (c)." That statute says that a person with a Georgia weapons license "shall be authorized to carry a weapon ... in every location in this state…provided, however, that ... persons in legal control of private property through a lease, rental agreement, licensing agreement, contract or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property...."

Therefore, GeorgiaCarry's "request for declaratory relief was not impermissible, and it was error to dismiss Appellants' [i.e. GeorgiaCarry's] declaratory judgment action on the basis that it improperly called for the interpretation and application of a criminal statute."

The trial court also was wrong in dismissing GeorgiaCarry's request for declaratory judgment on the basis that it "improperly compelled action by the Garden," the opinion says. "While the wording of the petition requests a declaration that the Garden 'may not ban' licensed individuals from carrying weapons at the facility, the practice effect of the request – and the relief sought – is simply a declaration that Evans, and similarly licensed individuals, may carry their respective weapons on the Garden's premises. That relief, if granted, is simply a declaration of rights and requires no action on the part of the Garden or anyone else.

And the trial court erred by dismissing GeorgiaCarry's request for an injunction to stop the Garden from banning licensed individuals from carrying weapons on the Garden's premises. Again, "this claim – which is identical to Appellants' claim for declaratory relief – does not improperly implicate the administration of criminal law. Accordingly, this portion of Appellants' claim for injunctive relief was improperly dismissed."

Only one part of the trial court's dismissal order was correct, today's opinion says. GeorgiaCarry sought an injunction in part to prohibit the Garden "from causing the arrest or prosecution" of licensed individuals who carry weapons at the facility." But the Garden "is not a government entity," the opinion says. "Because the Garden lacks the authority to administer the

criminal law, enjoining the Garden from 'causing' an arrest or prosecution would be fruitless." Furthermore, the requested injunction to prevent the arrest or prosecution of GeorgiaCarry "squarely implicates the administration of criminal law and, thus, is improper."

"Judgment affirmed in part and reversed in part and case remanded."

Attorney for Appellant (GeorgiaCarry.org): John Monroe of John Monroe Law, PC
Attorneys for Appellees (Atlanta Botanical Garden): Michael Brown and David Carpenter of Alston & Bird, LLP

WALKER-MADDEN V. THE STATE (S16A0324)

In a horrific child abuse case, the Georgia Supreme Court has unanimously upheld the conviction of malice murder and the sentence of life in prison with no chance of parole given to Desmond Walker-Madden for the beating death of his girlfriend's son, 2-year-old Gregory Anderson, Jr.

In today's opinion, written by **Justice Keith Blackwell**, the high court finds that the evidence presented at trial in **DeKalb County** "was legally sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Walker-Madden was guilty of the crimes of which the jury, in fact, found him guilty."

According to the facts of the case, Daniella Bernard and Walker-Madden had dated off and on while in high school in Mississippi. She also dated Gregory Anderson for a while, and in May 2005, the two had a son together, Gregory Anderson, Jr., whom they nicknamed "Man-Man." After Bernard ended her relationship with Anderson, she began attending Spelman College in Atlanta, resumed her relationship with Walker-Madden who attended college in Mississippi, and in 2007, they had a daughter.

When Bernard had to be back at school for the start of a new semester, she and Walker-Madden, along with the two children, drove from Mississippi to Atlanta, where they checked into the Country Hearth Inn near the old South DeKalb Mall the morning of March 26, 2008, planning to stay for a week. While Bernard attended classes that day, Walker-Madden cared for the children. After getting a phone message from Walker-Madden that Gregory was sick, Bernard picked up some Motrin and food and returned to the motel. Walker-Madden offered to bathe Gregory, and as he did so, Bernard noticed some scratches on the toddler's side. She also observed he had a "busted" lip, neither of which she had noticed before. Walker-Madden said "Man-Man" had fallen on the stairs. Bernard also noticed a hole in the wall that she had not seen and that had not been reported to the inn, although Walker-Madden told her it had been there when they had arrived. That night and the next morning, Gregory told his mother that his "tummy" hurt and she gave him Motrin.

The next day, while Bernard was in class, she missed a call from Walker-Madden. When she called him back, he said Gregory was throwing up. On the way back to the motel, he called her again and said that Gregory was "yelling and screaming" and bleeding from his "butt." She told him to call 911, which he did at 12:16 p.m. A guest staying at the motel later testified that she had heard a toddler screaming in seemingly excruciating pain. Bernard and paramedics arrived at the motel at the same time, where they found the toddler lying on the floor in the bathroom, wearing a shirt but no pants. He was unconscious, unresponsive, blue in the face, gasping for air, and bleeding from his rectum. Blood was "everywhere" – on the wall, the bed, and throughout the bathroom. An ambulance took Gregory to Hughes Spalding Children's

Hospital, and Bernard, who had asked Walker-Madden to come with her, followed in her car while Walker-Madden remained at the motel where he took a trashbag of items to an outdoor trash can and where Gregory's bloody clothes were later found. He later told police Bernard had told him to stay behind with their baby girl, even though he had told her they should all go to the hospital together. After doctors determined Gregory needed a trauma surgeon, he was transported in critical condition to Egleston Children's Hospital. A team of doctors, some of whom observed several healing abrasions on Gregory's upper body, tried to save the toddler's life, but they were unable to find the source of his bleeding. Gregory died that afternoon.

An autopsy was conducted, and the medical examiner later testified that the toddler's pancreas had been split in two, consistent with a forceful blow to his abdomen. The rectal injury had been caused by an object that had been inserted into the baby's anus. Both injuries resulted in tremendous blood loss. In addition, the medical examiner found various scrapes and bruises on Gregory's forehead, face and neck, as well as contusions and abrasions on his chest and abdomen. Bruising under his scalp was in healing stages.

Walker-Madden was indicted for malice murder, felony murder based on cruelty to children in the first degree, felony murder based on aggravated assault, felony murder based on aggravated sexual battery, and other crimes, including aggravated sexual battery stemming from Walker-Madden allegedly beating and sodomizing Gregory. The State filed a notice it would seek a prison sentence of life without parole. The State also filed a motion asking the court to allow it to admit "similar transaction evidence" of incidents involving Walker-Madden's violence toward Bernard. Following a hearing, the judge granted the motion. In a 2012 jury trial, Walker-Madden was convicted of all charges and sentenced to life without the possibility of parole plus 20 years. He then appealed to the Georgia Supreme Court, arguing that the trial court erred in admitting the similar transaction evidence.

But in today's opinion, the high court disagrees.

Specifically, the State was allowed to prove that beginning in 2007, Walker-Madden once punched Bernard in the face, another time bit her on the nose, and a few days before Gregory's death, bit her on the face. Under the state's old evidence code, which applied at the time of Walker-Madden's trial, the trial court admitted the similar transactions to show Walker-Madden's "course of conduct" and "bent of mind," which were appropriate purposes for the introduction of evidence of a defendant's "prior bad acts." (Under the new Evidence Code, these purposes have been eliminated.)

In previous opinions, "we have explained that, in cases of domestic violence, prior incidents of abuse against family members 'are more generally permitted because there is a logical connection between violent acts against two different persons with whom the accused had a similar emotional or intimate attachment,'" today's opinion says. Walker-Madden argued that the trial court applied this more liberal standard for the admission of domestic violence incidents in an overly broad way.

"We have said, however, that evidence that the accused 'used violence against an adult with whom he had had a close, loving relationship was admissible to show his bent of mind in using violence against a member of his family, even though the family member was [an] infant.'"

Walker-Madden argued, however, that the trial court's admission of the incidents was based on a clearly erroneous finding that he and Gregory had a familial relationship, when in fact they had no emotional or intimate connection.

But the Court has rejected that contention as well, finding that "Walker-Madden was a part of Gregory's life – living with him for at least a month, seeing him frequently at other times, and indicating that he was part of his family."

"We conclude that the trial court's factual finding of a familial relationship was not clearly erroneous and its admission of the similar transaction evidence did not amount to an abuse of discretion."

Even assuming the admission of the similar transaction evidence was in error, "it was harmless" in this case, the Supreme Court concludes. "As the trial court correctly recognized in its order denying the motion for new trial, the evidence against Walker-Madden was overwhelming."

The only error the trial court made was in merging the crimes of cruelty to children in the first degree and aggravated sexual battery with malice murder. "As a result, the court did not convict and sentence Walker-Madden for either of those offenses," the opinion says. "But the aggravated sexual battery did not involve the same conduct as the malice murder. And even if the count of cruelty to children charged the same conduct as the malice murder, this Court has held in similar circumstances that those crimes do not merge."

As a result, the Court is sending the case back to the trial court to add sentences for those two crimes as well.

Attorney for Appellant (Walker-Madden): Michael Tarleton
Attorneys for Appellee (State): Robert James, Jr., District Attorney, Donna Stribling, Dep. Chief Asst. D.A., Lee Williams, Asst. D.A., Lenny Krick, Asst. D.A., Samuel Olen, Attorney General, Beth Burton, Dep. A.G., Paula Smith Sr. Asst. A.G., Matthew Youn, Asst. A.G.

****

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

* Phirronnius Edwards (Colquitt) **EDWARDS V. THE STATE (S16A0255)**
* Antonio Jones (DeKalb Co.) **JONES V. THE STATE (S16A0498)**