Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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GEORGIACARRY.ORG. V. CODE REVISION COMMISSION (S16A1045)

The Supreme Court of Georgia has ruled against a gun rights organization in its attempt to compel state officials to amend Georgia law and make it legal for a licensed gun owner to carry a gun on school property.

In today's unanimous opinion, written by **Chief Justice Hugh Thompson**, the high court has upheld a **Fulton County** judge's dismissal of a lawsuit brought by GeorgiaCarry.Org, Inc. against the Code Revision Commission and its members, including Gov. Nathan Deal, House Speaker David Ralston, and Lt. Gov. Casey Cagle. The Commission is responsible for compiling, editing and publishing the laws and resolutions passed by the General Assembly.

During the 2014 legislative session, the General Assembly passed two related bills, and the governor signed both into law. The first that passed and was signed by the governor on April 22, 2014, was House Bill 826. It amended Georgia Code § 16-11-127.1 to permit a person licensed to carry a firearm to do so within a "school safety zone," which is defined as "any real property or building owned by or leased to any school or postsecondary institution." The second that passed and the governor signed one day later, on April 23, 2014, was House Bill 60. It also amended § 16-11-127.1, but it did so by specifically prohibiting the carrying of a firearm or other weapon within a school safety zone. Among the exceptions, House Bill 60 allowed licensed gun owners to carry a firearm within a school safety zone but only "when such person carries or picks up a student within a school safety zone."

The Code Revision Commission determined that the two bills conflicted with each other, and under Georgia Code § 28-9-5 (b), when two bills obviously conflict and cannot be read together, the last one passed controls. The Commission then determined that House Bill 60

would be the one to take effect and it incorporated its school zone language into Georgia Code § 16-11-127.1. During the next legislative session, the governor approved House Bill 90, which reenacted and made corrections to Georgia Code § 16-11-127.1 but did not change the school zone language that had been incorporated from House Bill 60.

Preferring House Bill 826, in February 2015, GeorgiaCarry.Org sued the Commission and its members, seeking a "writ of mandamus" to force the Commission to republish the text of § 16-11-127.1 so it was consistent with the language of House Bill 826. GeorgiaCarry also sought a ruling from the judge declaring that it is not a crime for a person with a weapons carry license to carry a firearm within a school safety zone. Both Gov. Deal and the Commission filed motions asking the trial court to dismiss the case, arguing that House Bill 90 rendered the action moot and that House Bill 826 had essentially been repealed by House Bill 60. In separate orders, the trial court granted the motions to dismiss the case, ruling (1) that House Bill 90 had fixed any defects in the language of the law; (2) that no controversy existed requiring resolution by a court because the law is clear that House Bill 60, the bill enacted last in time, controls; and (3) that GeorgiaCarry was not entitled to mandamus relief. GeorgiaCarry then appealed the ruling regarding the Commission's motion to dismiss to the Georgia Supreme Court.

Under today's opinion, the high court has determined that the school zone language of House Bill 60 effectively repealed the provisions of House Bill 826 amending Georgia Code § 16-11-127.1. Under Georgia Code 28-9-5 (b), if the relevant provisions of the two bills "cannot 'reasonably stand together,' the later enacted bill controls," the opinion says. And "we agree with the trial court's conclusion that their provisions relating to the carrying of weapons within a school safety zone are in irreconcilable conflict."

"Accordingly, the two statutes cannot stand together and the provisions of House Bill 826 § 1-1 related to the carrying of firearms in a school safety zone did not survive the subsequent enactment of House Bill 60," the opinion says.

At the time the trial court ruled on the motion to dismiss, the language of House Bill 60 had already been written into the Georgia Code by the Code Revision Commission, and was controlling law. Therefore, "GeorgiaCarry.Org was not entitled to relief under any state of provable facts alleged in the amended complaint, there was no actual controversy which would have authorized a declaratory judgment, and the trial court did not err by granting [the Commission's] motion to dismiss," the opinion concludes.

"Judgment affirmed. All the Justices concur."

Attorney for Appellant (GeorgiaCarry): John Monroe
Attorney for Appellee (Commission): Wayne Allen, Office of Legislative Counsel, General Assembly

SHAH V. THE STATE (S16A1083)

The Supreme Court of Georgia has reversed the felony murder conviction and life prison sentence given to Jessica Shah for intentionally starving to death her 7-month-old baby girl.

In this high-profile **Muscogee County** case, **Justice David Nahmias** writes in today's unanimous opinion that the trial judge erred by refusing her attorney's request to instruct jurors that they could also decide whether Shah was guilty instead of reckless conduct, a misdemeanor and less serious charge than the felony first degree child cruelty charge that was the basis of her felony murder conviction. As a result, Shah is entitled to a new trial.

According to the facts at trial, Shah, a lifetime resident of New York, had moved to Columbus, GA with her Army nurse boyfriend, Captain Enrique Molina, and her four children – a 14-year-old daughter, a 10-year-old son, an 8-year-old son with autism, and a 2-year-old son. In December 2010, Shah and Molina had a baby girl together, named Alejandra. The baby was 13 weeks premature and had to remain in the hospital for almost eight weeks. When she was discharged, the pediatrician told Shah to feed the baby whenever she was hungry, rather than keeping her on a schedule. Also, because of her low birth weight, Shah was to give the baby Neosure formula, a high-calorie formula for premature infants. Molina did not live with them, but he watched the baby and 2-year-old, his other child with Shah, on most weekends, although he was not there to help with all the daily tasks of raising five children. During the summer of 2011, Shah's teenage daughter was primarily responsible for feeding and changing Alejandra. Shah, who was unemployed, took primary responsibility for the care of the 2-year-old.

During the week of July 24, 2011, Shah's air conditioner broke while the temperature outside soared to 96 degrees. Shah's landlord promised to repair the unit when he returned from out of town. In the interim, Shah purchased a small backyard pool for her children to use to cool off during the day. On Sunday, July 31, Shah checked on the baby at 7 p.m. and her daughter fed Alejandra around 8:00 p.m. Around midnight, the 14-year-old gave Alejandra her last bottle for the night and put her to sleep in the car seat they kept in the crib because the baby would cry if put directly in the crib. Around 10 a.m. the next morning, Shah received a call from her landlord saying that he would come to repair the air conditioner that day. She woke her daughter and asked her to check on Alejandra and feed her if she cried while Shah went to the bank to withdraw money for rent, which was due that day, but the girl fell back asleep. When Shah returned from the bank, she stayed outside the house with the landlord until he left some time around 1:00 p.m. Shortly after that, Shah asked her teenage daughter if she had checked on the baby yet. The girl said she had not, went to the room where Alejandra was sleeping, and saw the baby was blue. The teenager cried out, and Shah came to see what was wrong. At that point, it had been 18 hours since Shah herself had last checked on Alejandra. At 1:20, Shah called 911and began CPR, but could not revive Alejandra. Responding officers found the baby girl lying on her back on the living room floor. She had obvious signs of lividity, dehydration and insect bites, which a medical examiner from the Georgia Bureau of Investigation later testified were from roaches or ants.

Following the autopsy, the GBI medical examiner who later testified for the State, concluded that Alejandra died of dehydration and probable hyperthermia. The baby exhibited many signs of dehydration, including sunken eyes, dry lips, and poor skin turgor. The medical examiner testified that dehydration in a premature baby in an overheated house would develop over many hours to days, and the most visible symptoms would be fussiness and decreased urine output. She also explained that severe dehydration can cause a child to lose 10 to 15% of her body weight in water. The doctor noted that the fact that Alejandra was premature increased her risk for hyperthermia, and that this risk was further increased by the fact that she was covered by a blanket in a house without air conditioning. Based on the contents of the child's stomach, the medical examiner estimated that Alejandra was fed two to three hours before she died. The medical examiner concluded the baby's death was accidental.

Three pediatricians also testified for the State. Two of them created growth charts, one of which was presented the third day of trial when one of the doctors was called to testify. It

showed that the baby weighed only 9 pounds, 4.8 ounces at her death, when she should have weighed 12.5 to 13.5 pounds. The prosecutor explained to the judge that she had only realized the night before that the growth chart was new evidence. She then explained to the court that with this new evidence, two of the physicians were going to testify that Alejandra had been starved for more than two months and her mother should have noticed her lack of growth. Shah's attorney took issue with this new evidence (but did not raise a formal objection), explaining that he had been "proceeding on the assumption that the substance of the charge against the defendant was that she left the child in a hot house for a week with the air conditioning out and that because of that, dehydration killed the child." The attorney pointed out that this "new theory that apparently the child has been intentionally starved to death" was first presented to him after the medical examiner had already testified, so he could not question her on that theory.

Shah was the only witness called to testify in her defense. She testified that the baby slept a lot and appeared to be growing fine. She said the week before her death, Alejandra sounded as if she was struggling to breathe so she made a doctor's appointment for her, but her condition did not seem to be urgent. She said initially she fed the baby every three to four hours as instructed, then later whenever she cried. She said they increased the amount of formula they were giving her and started adding rice cereal to the formula. The night of her death, the baby cried twice, and Shah said that both times her daughter gave her a bottle. The baby had always slept with her security blanket.

In closing argument, the prosecutor argued that Alejandra died because Shah willfully deprived her of formula and that her failure to feed the baby the night of her death was not an accident. Shah's attorney argued she had not intentionally harmed Alejandra and the baby's death was accidental, as the State's medical examiner had concluded. The attorney told the jury that the theory the baby had been gradually and intentionally starved was "junk science" that was presented by the State in a surprise attack, leaving no chance to rebut it.

In January 2013, Shah was convicted of felony murder based on "cruelty to children in the first degree – deprivation." She was also convicted of cruelty to children in the first degree by willfully depriving her of sustenance and thereby jeopardizing her health and well-being, and cruelty to children in the first degree by "maliciously caus[ing the baby] cruel or excessive physical and mental pain by leaving [her] in a hot room for several hours." Shah then appealed to the Georgia Supreme Court.

In today's opinion, the high court finds that the evidence presented at trial was "legally sufficient to authorize a rational jury to find Appellant [i.e. Shah] guilty beyond a reasonable doubt of the crimes for which she was convicted. Thus, although we reverse Appellant's convictions based on a jury instruction error, the State may retry her if it so chooses."

But the trial court's refusal to give a reckless conduct instruction to jurors before their deliberations, as Shah's attorney requested, "was erroneous," the opinion says. "This Court has explained that 'reckless conduct may be a lesser included offense of cruelty to children' if the harm to the child resulted from criminal negligence rather than malicious or willful conduct. We have also explained that 'a written request to charge a lesser included offense must always be given if there is any evidence that the defendant is guilty of the lesser included offense.'"

It was possible the jury could have concluded that Shah was not at all criminally culpable because she believed her teenage daughter was appropriately feeding Alejandra and checking on her. Or the jury could have concluded that such complete reliance on a teenager to care for a very

fragile infant in a dangerous situation was reckless. "Because there was evidence to support a jury instruction on reckless conduct, the trial court erred in not giving such a charge when Appellant requested it," the opinion says. And that error was harmful, the Court concludes.

"The evidence that [Shah] left [her daughter] in charge of Alejandra's feeding and care was uncontradicted, and the evidence that Appellant willfully deprived Alejandra of sustenance and maliciously let her suffer in a hot room was not overwhelming," today's opinion says. "Accordingly, we cannot say that the trial court's failure to instruct the jury on reckless conduct was harmless, and we therefore reverse Appellant's child cruelty convictions." Because Shah's felony murder conviction is based on first degree child cruelty, it too must be reversed, the opinion says.

Attorney for Appellant (Shah): Katherine Dodd
Attorneys for Appellee (State): Julia Slater, District Attorney, Robert Bickerstaff II, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.

WEST V. THE STATE (S16A1369)

The Supreme Court of Georgia has ruled that a Georgia statute, which outlaws insulting or verbally abusing a public school employee in the presence of pupils, is unconstitutional.

In today's unanimous opinion, **Justice Carol Hunstein** writes that Georgia Code § 20-2-1182 is "unconstitutionally overbroad" in violation of the right to free speech guaranteed by the First Amendment of the U.S. Constitution.

As a result, a father who was arrested and charged with violating the statute has won his appeal of a **Glynn County** judge's refusal to throw out the charges against him before his case goes to trial.

According to briefs filed in the case, on April 3, 2015, Michael Antonio West, whose child had been harassed by two other students, allegedly boarded a school bus, cussing and threatening the students. He was immediately told by the bus driver that he could not be on the bus, which was packed with minor school-aged children. After being told to get off the bus, West continued to use profanity and threaten the students, as well as cuss the bus driver, prosecutors claim. Eventually West got off the bus, but he continued to use profanity while outside at the bus stop. That day, West was arrested and charged with violating Georgia Code § 20-2-1182. The statute says: "Any parent, guardian, or person other than a student at the public school in question who has been advised that minor children are present and who continues to upbraid, insult, or abuse any public school teacher, public school administrator, or public school bus driver in the presence and hearing of a pupil while on the premises of any public school or public school bus may be ordered to leave the school premises or school bus, and upon failure to do so such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $500." On Dec. 9, 2015, West filed a "Motion to Dismiss and Quash the Accusation," arguing that the statute violates his free speech rights. In January 2016, the trial judge denied his motion. The Georgia Supreme Court subsequently granted his application to appeal the pre-trial ruling.

"It is 'evident beyond the need for elaboration' that government has a compelling interest in protecting the physical and psychological well-being of children," today's opinion says. "'We nonetheless have the obligation to ensure that, in its zeal to promote this worthy aim, our

legislature has not unwittingly curtailed legitimate modes of expression in a real and substantial way."

Although Georgia Code § 20-2-1182 ostensibly seeks "to prevent disruptions to education or school activities, the statute neither ties the prohibited expression to the disruption of normal school activities nor limits the prohibitions to specific, fixed times, such as when school is in session," the opinion says. "Also concerning, the statute does not proscribe all speech that might be boisterous or disruptive; instead § 20-2-1182 prohibits only that speech directed at public school officials which may be perceived as negative or unfavorable."

"The practical effect of the plain language of § 20-2-1182 is that *any person* – may it be a parent, school system employee, or concerned citizen while on school premises or a school bus – who dares to speak critically to school officials *at any time* in the presence of minors must leave the premises when so ordered by a school official or face arrest and prosecution for a misdemeanor. Though the statute ostensibly only criminalizes the speech *after* the speaker refuses to leave school premises, the result is the same: The speaker is silenced, either through his or her absence on the school premises or school bus or through subsequent prosecution, based on the content of his or her speech, be it at a high school football game or a parent-teacher conference."

"Although this criminal statute may have a legitimate application, it also makes unlawful a substantial amount of constitutionally protected speech," the opinion says. "While this Court 'has the authority to narrow a statute to avoid unconstitutional infirmities…under our system of separation of powers, this Court does not have the authority to rewrite statutes.' We agree with West that this statute, though perhaps well intentioned, neither regulates unprotected speech nor is appropriately tailored to meet its intended objective and is therefore overbroad." As a result, the trial court's refusal to throw out the charges against West is reversed, the opinion says.
Attorneys for Appellant (West): Mark Bennett, Jason Clark
Attorney for Appellee (State): Maria Lugue, II, Solicitor

ROBBINS V. THE STATE (S16A1342)

The Supreme Court of Georgia has unanimously upheld the murder conviction and life prison sentence given to a **Chatham County** man for beating his wife to death.

In this locally high-profile case, **Justice Harold Melton** writes that the high court has rejected both of Robert Robbins' arguments, including his claim that the trial judge erred by allowing in as evidence statements his wife, Susan Robbins, made the morning after he beat her.

According to the evidence at trial, the night of Feb 7, 2011, Robbins, about 59, drank a box of wine and a bottle of peppermint schnapps, and took pain pills, before becoming enraged when he could not find his lighter. In his frustration, he severely beat his wife, Susan, also in her late 50s, for an extended period of time with a plank of wood, breaking her nose; fracturing her ribs and wrist; breaking her femur; and causing a collapsed lung, bilateral subdural hematomas, and a subarachnoid brain bleed. At some point, Robbins' son saw Robbins twist Susan's arm and try to choke her while she lay nearly unconscious on the ground. The next morning, relatives called Susan's niece, Elizabeth Grimes, and told her what had happened. Grimes went to Susan's RV and found Susan sitting on a couch with a broken and bloody nose. She was covered in dried blood and nearly incoherent, but while Robbins was still sleeping in another part of the RV, she told Grimes about the beating that she had suffered at the hands of her husband, about his

drinking and taking pain pills all night, and about his anger at being unable to find his lighter. Susan told Grimes he'd beaten her throughout the night, and she showed Grimes the wooden plank Robbins had used. Susan initially did not want to go to the hospital, but Grimes eventually convinced her to go. At the hospital, Grimes told police what Susan had told her. As the investigation progressed, however, Grimes became increasingly uncooperative.

Susan's condition eventually worsened and she was placed on a ventilator to help her breathe. Her doctor informed her that she would need to have surgery in order to be able to breathe on her own, and Susan initially agreed but later changed her mind and opted against surgery. After 25 days in the hospital, her daughter put her in hospice care on March 4, 2011. The next day, Susan died as a result of the injuries from the beating.

By the time the case went to trial, Grimes denied she had told police anything about a beating and instead testified Susan had told her that her injuries had resulted from a fall from her trailer. However, Susan's daughter and a police detective both testified Grimes had told them Susan had conveyed to her the details of the night-long beating by her husband.

In May 2014, the jury found Robbins guilty of felony murder, aggravated assault and three counts of aggravated battery. He was sentenced to life plus 20 years in prison.

In today's opinion, the high court finds that the "evidence was sufficient to enable a rational trier of fact to find Robbins guilty of all of the crimes of which he was convicted beyond a reasonable doubt."

In his appeal, Robbins argued that the trial judge was wrong to allow in as evidence the statements allegedly made to Grimes the morning after Susan had been beaten. "We disagree," the opinion says.

Under Georgia Code § 24-8-803, "we find that such statements could be properly admitted into evidence as excited utterances." "Excited utterances," defined as statements made while under the stress or excitement caused by a startling event or condition, "may be admitted into evidence under the excited utterance exception to the rule against hearsay," the opinion says. "It is the totality of the circumstances, not simply the length of time that has passed between the event and the statement, that determines whether a hearsay statement was an excited utterance."

"While the beating itself was not still actively occurring, Susan's alleged attacker was still in the RV. And we find no abuse of discretion in the trial court's conclusion that under the totality of the circumstances, Susan was still suffering under the stress of the all-night beating such that her statements to Grimes were admissible under the excited utterance exception to the rule against hearsay." Susan's statements to Grimes were also admissible to question the credibility of Grimes' testimony at trial that Susan had never told her anything about the beating.

"Indeed, the record reveals that Grimes initially told police that Susan had told her several details about the beating that Susan had suffered at the hands of Robbins and the reason for the beating," the opinion says.

While Robbins also argued that his trial attorney was ineffective, in violation of his constitutional right to effective assistance of counsel, "We disagree," the opinion says.

Attorney for Appellant (Robbins): Amy Ihrig

Attorneys for Appellee (State): Margaret Heap, District Attorney, Lyndsey Rudder, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Aimee Sobhani, Asst. A.G.

IN THE INTEREST OF M.D.H., A CHILD (S16G0428)
IN THE INTEREST OF D.V.H., A CHILD (S16G0546)

Charges against two juveniles, which were dismissed by the juvenile court after the State failed to file delinquency petitions within the deadline set by a Georgia statute, were properly refiled by the State, according to a ruling today by the Georgia Supreme Court.

The cases against two juveniles, whose charges were dismissed in juvenile court after the State failed to file a delinquency petition within the deadline set by a Georgia statute, may proceed under an opinion today by the Georgia Supreme Court.

At issue in these cases is whether charges that are dismissed against a juvenile, due to State prosecutors' failure to file their petition within 30 days of filing a formal "complaint," may be refiled or not. In today's opinion, written by **Justice David Nahmias**, the Court has decided the State may refile the charges and proceed with the case against the juvenile.

In the case of M.D.H., on Dec. 5, 2014, authorities filed a "complaint" against the 13-year-old in **Cherokee County** juvenile court, alleging he had sent threatening text messages telling people he was going to bring guns to his middle school and "kill his friend if he told anyone about his plans." The same day, a detention hearing was held, and authorities decided it was not necessary to detain M.D.H. On Jan. 6, 2015, prosecutors filed a "petition" in the juvenile court, alleging delinquency. Under Georgia Code § 15-11-521 (b), if a child is not detained prior to the court's judgment in his case, "a petition alleging delinquency shall be filed within 30 days of the filing of the complaint alleging violation of a criminal law or within 30 days of such child's release pursuant to a determination that detention is not warranted." The statute also says: "Upon a showing of good cause and notice to all parties, the court may grant an extension of time for filing a petition alleging delinquency. The court shall issue a written order reciting the facts justifying any extension." In M.D.H.'s case, the State was one day late in filing its petition, and on Jan. 12, 2015, M.D.H.'s attorney filed a motion to dismiss the complaint because the petition was not filed within 30 days of the complaint as the law required. The State did not at any time file a request for an extension of time. Following a hearing, in which the State conceded that the petition had been filed a day late, the juvenile court dismissed the complaint, but it did so "without prejudice," meaning M.D.H. could still be prosecuted if the State chose to file a new complaint. His attorney argued that based on the law, it should have been dismissed "with prejudice," meaning the State would be barred from ever prosecuting the juvenile for the conduct. The State filed a new complaint based on M.D.H.'s alleged threats and then, the day after the first case was dismissed, filed a delinquency petition based on that new complaint. M.D.H. filed a motion to dismiss it, but the trial court denied the motion. The case proceeded to trial, and M.D.H. was found delinquent due to reckless conduct, which is a related but less serious offense than terroristic threats, and he was sentenced to probation. He then appealed both the trial court's refusal to dismiss the original petition "with prejudice" and his subsequent judgment and sentence. But the Court of Appeals upheld the trial court's rulings, finding that in § 15-11-521 (b), "the Legislature did not provide explicit language providing that a juvenile would receive a dismissal with prejudice as a result of the State's failure to file a timely petition for delinquency." M.D.H. then appealed to the state Supreme Court, which agreed to review the case to determine whether "the Court of Appeals correctly applied § 15-11-521 (b)."

Three days after its ruling in M.D.H., in another case, the Court of Appeals answered the same question the opposite way, finding that the failure to comply with § 15-11-521 (b) requires

dismissal of the juvenile case, but the dismissal is *with* prejudice. In this second case, D.V.H. was charged in **Jasper County** Juvenile Court when he was 16 years old with criminal damage to property, criminal trespass, and theft by taking for allegedly trespassing on private property, stealing a surveillance camera, and damaging a pick-up truck. The charges were contained in two complaints that were filed with the clerk of the court on Oct. 8, 2014. As in the *M.D.H.* case, the State failed to then file delinquency petitions within 30 days after the filing of the complaints as required by Georgia Code § 15-11-521 (b). Unlike the *M.D.H.* case, after missing the Nov. 8, 2014 deadline to file a petition, on Nov. 18, 2014, the State filed a motion asking the court to extend the time limit. But the trial court denied the motion and dismissed the case, finding the State had failed to show good cause for missing the filing deadline. The State then filed two new complaints alleging the same criminal acts as contained in the original complaints. Eight days later, it filed the delinquency petitions. D.V.H. objected and filed a motion to dismiss the petitions, arguing the State had overreached its authority in attempting to circumvent the time limits set out in the statute. His attorney argued that if the new cases were allowed to go forward, the prior dismissals would be rendered meaningless, and therefore, the time limits imposed by the statute were meaningless. The trial court ruled in favor of D.V.H. and dismissed the petitions, finding that "the time limits in the Juvenile Courts of this State must be strictly construed in favor of the accused and that refiling a case under a new number to reset the time limits circumvents the purpose of the time limits." On appeal, the Court of Appeals upheld the juvenile court's ruling. After the State filed a motion for reconsideration, the court acknowledged that "there may be some tension between the analysis" in its seemingly contradictory rulings in the two cases. But it distinguished M.D.H. from D.V.H. on the ground that it arose from a "significantly different procedural posture" because in M.D.H., the State "had not sought and been denied an extension of time."

In today's opinion, the high court states the Court of Appeals was incorrect in concluding that the two cases are distinguishable because of their "significantly different procedural posture." "Whether the State does not seek an extension of the statutory deadline for filing a delinquency petition (as in M.D.H.) or seeks an extension but is denied (as in D.V.H.) does not affect the consequence for missing the deadline," the opinion says. "The same question – what is that consequence? – is presented in both of these cases, and we will proceed to address it."

The opinion says the statute is clear that the petition must be filed within 30 days, but the statute "does not articulate what the remedy is for missing the deadline. So we must determine what remedy the General Assembly meant to impose with this silence."

The Georgia Supreme Court's 1996 ruling in another juvenile's case, that of R.D.F., as well as rulings in similar cases, reflects an understanding that dismissal of a delinquency or criminal case with prejudice due to a statutory violation is a severe sanction, as it precludes the State from even trying the alleged offender for conduct that may be a serious violation of the criminal law, and such an extreme result will not be presumed in the absence of clear legislative direction," the opinion says. "*R.D.F.* was well-established law at the time the General Assembly drafted and passed § 15-11-521 in 2013," and "we presume that the General Assembly enacted the statute with reference to our decision in *R.D.F.*"

"If the General Assembly wishes to impose a harsher consequence than dismissal without prejudice for the State's failure to comply with § 15-11-521 (b), it can do so by expressly providing for that remedy, as we explained 20 years ago in *R.D.F.* Until that happens, if the State

fails to file a delinquency petition within 30 days of the complaint and does not seek and receive an extension of the deadline, the case must be dismissed without prejudice." As a result, the State may start over and refile charges against the youth.
Attorney for Appellant (M.D.H.): Cory DeBord
Attorneys for Appellee (State): Shannon Wallace, District Attorney, Wallace Rogers, Jr., Asst. D.A., Cliff Head, Asst. D.A.

WESTERN SKY FINANCIAL, LLC ET AL. V. STATE OF GEORGIA, *EX REL. OLENS, ATTORNEY GENERAL (S16A1011)**
STATE OF GEORGIA, *EX REL.* OLENS, ATTORNEY GENERAL V. WESTERN SKY FINANCIAL, LLC ET AL. (S16X1012)

The Supreme Court of Georgia has ruled against out-of-state payday lenders who made small, high-interest loans over the internet and telephone to millions of Georgians.

In today's unanimous opinion, written by **Justice Robert Benham**, the Supreme Court of Georgia has upheld a **Fulton County** judge's ruling denying the lenders' motion to dismiss the case, and requiring the lenders to deposit into the court's registry more than $15 million, which represents the amount lenders collected from Georgia borrowers since the litigation began. One of the issues in this case is whether Georgia's Payday Lending Act applies to these particular loans because they involve interstate commerce.

The complex case involves "payday loans," which are short-term loans of a small dollar amount that are usually offered by businesses other than banks. The amount of money loaned is supposed to be enough to get the borrower to his next "payday." Because the loans are short-term, the cost of borrowing is high in fees and interest, and opponents argue that payday loans prey upon the most vulnerable people in society. Payday lending has been illegal in Georgia for more than 100 years, but it has continued to grow. In 2004, the Georgia General Assembly enacted the Payday Lending Act (Georgia Code § 16-17-1) in an attempt to shut down the industry. In its findings, the General Assembly stated that "payday lending continues in the State of Georgia and that there are not sufficient deterrents in the State of Georgia to cause this illegal activity to cease. The General Assembly has determined that various payday lenders have created certain schemes and methods in order to attempt to disguise these transactions or to cause these transactions to appear to be 'loans' made by a national or state bank chartered in another state in which this type of lending is unregulated, even though the majority of the revenues in this lending method are paid to the payday lender. The General Assembly has further determined that payday lending, despite the illegality of such activity, continues to grow in the State of Georgia and is having an adverse effect upon military personnel, the elderly, the economically disadvantaged, and other citizens of the State of Georgia."

In July 2013, Georgia's Attorney General, representing the State, filed a complaint against Western Sky Financial, LLC, a Native American tribal internet lender based in South Dakota; Martin A. Webb, Western Sky's sole shareholder and a member of the Cheyenne River Sioux Tribe; CashCall Inc., which hosted Western Sky's website and provided customer support and is a California corporation; and Delbert Services Corporation, which also helped Western Sky service the loans. In the complaint, the Attorney General alleged the defendants violated Georgia Code § 16-17-2 (a) of the Payday Lending Act which states: "It shall be unlawful for any person to engage in any business, in whatever form transacted, including, but not limited to,

by mail, electronic means, the Internet, or telephonic means, which consists in whole or in part of making, offering, arranging, or acting as an agent in the making of loans of $3,000 or less…." Western Sky and the others filed a motion asking the court to dismiss the action. Following a hearing, the trial court issued an injunction which prohibited Western Sky and the others from making unsecured loans of $3,000 or less in the state of Georgia, and which restrained CashCall and Delbert from transferring to third parties the servicing rights on $3,000 loans made to any Georgians. In an injunction, the trial court ordered the defendants to deposit $200,000 into an escrow account. But the Attorney General's office later asked the court to modify the injunction after claiming they discovered two things: that the defendants had collected far more than $200,000 from Georgia consumers during the litigation – more than $15 million – and that the lenders could soon be insolvent. The Attorney General argued that Western Sky had closed its lending operations and laid off its employees and that the defendants had settlements with other states that collectively cost them at least $10 million. In October 2015, the trial court amended the injunction requiring Western Sky and the defendants to "deposit $15,279,762.95 into the registry of the court" and "continue servicing the loans at issue at their own expense." In this pre-trial appeal, Western Sky and the others then appealed to the Georgia Supreme Court. In a cross-appeal, the Attorney General's office appealed the trial court's refusal to allow it to add two other parties it argued were inextricably involved in the illegal lending enterprise.

In today's 45-page opinion, "we affirm the order denying defendants' motion to dismiss, affirm the modification of the injunction order," requiring the $15 million deposit into the court's registry, "and reverse the order denying the State's motion to add defendants."

First, the Court addresses the lenders' argument that because they are from out-of-state, the loans at issue involve interstate commerce, which they claim are excluded by the plain language of the Act: "Payday lending involves relatively small loans and does not encompass loans that involve interstate commerce," one section of the Act says.

"We reject the notion that this phrase was meant to exclude loans that involve interstate commerce from the scope of the Act," the opinion says. "If that were so, the Act would be virtually meaningless because it would prohibit nothing. Instead, we are persuaded that this language is simply a legislative finding of fact that is obviously factually inaccurate."

"Given the clear and unambiguous scope of the Act as a whole, to interpret that phrase as a definitional limitation upon payday lending and thereby exempt loans that involve interstate commerce from the prohibitions of the act would create such a contradiction and absurdity as to demonstrate that the legislature did not mean it to create such a limitation. The trial court did not err in denying the motion to dismiss on this ground."

The lenders also argued that tribal sovereignty, recognized by the Indian Commerce Clause of the U.S. Constitution, precludes jurisdiction over the matter. Because Webb, who claims to be a Native American owns Western Sky, the South Dakota limited liability company is imbued with the privileges and attributes of a tribal member under federal and tribal law, the lenders argued. But "we hold that this State's jurisdiction is not defeated by tribal sovereignty," the opinion says. "'Absent express federal law to the contrary,' Native Americans who conduct activities beyond reservation boundaries are generally subject to non-discriminatory civil and criminal laws."

As to the cross-appeal, the Attorney General argued that J.Paul Reddam, the sole shareholder of defendants CashCall and Delbert Services, and the wholly-owned subsidiary of

CashCall, WS funding, which is also controlled by Reddam, should be added as parties. The trial court denied the State's motion, but in today's opinion, "we reverse the order denying the motion to add the proposed defendants in this case," the opinion says.

"Judgment affirmed in Case No. S16A1011. Judgment reversed in Case No. S16A1012. All the Justices concur."

Attorneys for Appellants (Western Sky et al.): R. Lawrence Ashe, Jr., William Holley, II, Nancy Baughan, Scott Zweigel, Joseph Barloon, Clifford Sloan, Thomas Nolan

Attorneys for Appellees (Olens): Samuel Olens, Attorney General, Timothy Butler, Counsel for Legal Policy, Daniel Walsh, Sr. Asst. A.G., Charlene Swartz, Asst. A.G., Monica Sullivan, Asst. A.G., Andrew Chesser, Asst. A.G.

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

* John Blackmon (Fulton Co.)	**BLACKMON V. THE STATE (S16A1306)** (The Court has upheld Blackmon's murder conviction and life prison sentence. But due to the trial judge's failure to recognize that the felony murder counts were thrown out for sentencing purposes, the judge incorrectly merged the underlying crime of unlawful possession of a firearm by a convicted felon into the felony murder charge that was based on that crime but vacated. As a result, the trial court failed to sentence Blackmon for gun crime, and the case is being sent back to the trial court to also sentence him for that crime.)
* Rodqucas Bowen (Fulton Co.)	**BOWEN V. THE STATE (S16A0850)**
* Thomas E. Bradford, Jr. (Columbia Co.)	**BRADFORD V. THE STATE (S16A0902)**
* Roy Lee Bradshaw (Putnam Co.)	**BRADSHAW V. THE STATE (S16A1070)**
* William Kenneth Capps (Ware Co.)	**CAPPS V. THE STATE (S16A1071)**

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IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

* Chalmer E. Detling, II	**IN THE MATTER OF: CHALMER E. DETLING, II (S17Y0294)**

The Court has accepted a petition for voluntary discipline and ordered the **three-month suspension** of attorney:

* Richard J. Storrs	**IN THE MATTER OF: RICHARD J. STORRS (S16Y1749)**

The Court has **rejected a petition for voluntary discipline**, in which the request was for a Review Panel Reprimand, from attorney:

* Nolen Arthur Hamer	**IN THE MATTER OF: NOLEN ARTHUR HAMER (S16Y1900)**