

Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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CITY OF ATLANTA V. MAYS ET AL. (S17A0629)

With an opinion today by the Supreme Court of Georgia, the City of Atlanta has lost its effort to annex five areas of **Fulton County** that today are part of the new City of South Fulton.

In today's unanimous opinion, written by **Justice David Nahmias**, the high court has upheld a lower court's ruling, finding that the trial court "correctly held that the annexations were invalid because at the time they would have become effective, the areas in question were already part of the newly incorporated City of South Fulton and thus ineligible for annexation by Atlanta."

In April 2016, Gov. Nathan Deal signed House Bill 514 into law, which provided for a November 2016 referendum so citizens could vote on whether to create a new City of South Fulton, whose boundaries were due to include most of the unincorporated territory in South Fulton County. Specifically, the language in House Bill 514 stated that, "The boundaries of the City of South Fulton shall include all unincorporated areas of Fulton County...as such exist on July 1, 2016," and "shall not include any territory that was annexed into another municipality before July 1, 2016." The City states that in the spring and summer of 2016, it received a number of applications from residents requesting annexation into Atlanta. The five annexation applications at issue in this case were from the communities of: Cascade Falls, the Northwest Cascade Business Corridor, Danforth Road, Cascade Manor, and Cottages at Cascade. State law (Georgia Code § 36-36-32) requires that for an area to be annexed, at least 60 percent of the property owners located in the area and 60 percent of the resident electors sign the petition agreeing to the annexation. The law requires that the City: investigate each application and ensure it is in compliance with the law; make plans to extend services to the annexed area; and

hold a public hearing to determine that annexation would be in the best interest of the residents and property owners. On June 20 and 28, 2016, the Atlanta City Council voted to adopt the annexation applications and annex the five areas into the City of Atlanta. The Mayor signed the annexation ordinances on June 21 and 28.

On July 19, 2016, Emelyn Mays and five others sued the City, seeking a “declaratory judgment,” or a declaration by the court that the City’s annexation of the five areas was invalid. They argued that the City rushed to annex the five territories after the General Assembly set them aside to be part of the new City of South Fulton. But in doing so, the City missed the deadlines imposed by House Bill 514. Following a hearing, on Sept. 8, 2016, the trial court granted the citizens’ request, declaring Atlanta’s annexations null and void. Specifically, the Fulton County Superior Court deemed the annexations as improper because under House Bill 514, each of the annexations was “untimely” and therefore the communities were part of South Fulton. The trial court also rejected the City’s argument that House Bill 514 was unconstitutional based on its argument that the statute cannot “trump the general law that permits Atlanta and other municipalities in South Fulton County to annex.” Subsequently, in the Nov. 8, 2016 referendum, the voters approved House Bill 514. The City of Atlanta then appealed to the Georgia Supreme Court.

In today’s opinion, although Mays argues the appeal is moot given the approval in November 2016 of the creation of South Fulton, the high court disagrees and has addressed the merits of the case. “Atlanta’s contentions – first, that the communities were properly annexed into Atlanta before they became part of South Fulton under the terms of House Bill 514 and second, that if they were not, House Bill 514 is unconstitutional – are ‘still alive,’” the opinion says.

The high court first determines whether the annexations were accomplished in time to remove the communities from the unincorporated areas of Fulton County that became the City of South Fulton. “Atlanta argues that we should look at when the annexations ‘occurred,’ and contends that the annexations ‘occurred’ as soon as the Mayor signed each ordinance in June,” the opinion says. “In support of this argument, Atlanta asserts that [Georgia Code] § 36-36-32 (a) indicates that an annexation ‘occurs’ before it becomes ‘effective’ because the statute says that for ad valorem tax purposes, the act ‘shall become effective...on December 31 of the year during which such annexation occurred.’ We need not decide what ‘occurred’ means regarding the effective date of the tax aspects of the annexation ordinances, however, because it is clear that no portion of the ordinances had any legal import before July 1. Thus, there was no effective annexation until July 1, and House Bill 514 requires that territory be ‘annexed’ before July 1 to be removed from South Fulton.”

Atlanta further argues that if House Bill 514 is construed as preventing its annexations of the five areas on (or even after) July 1, 2016, then the act is unconstitutional and void. “And because House Bill 514 is void, the argument continues, the communities are not part of South Fulton and were subject to annexation by Atlanta on July 1.” The City bases its argument on the Uniformity Clause of the Georgia Constitution, which says that “no local or special law shall be enacted in any case for which provision has been made by an existing general law.” No one disagrees that House Bill 514 is a “local” law, and Atlanta contends that House Bill 514 conflicts with the “general” laws that give cities the power to annex continuous, unincorporated areas when the city meets the requirements of the State’s “Municipal Annexation Statutes.” Atlanta

claims that House Bill 514 violates the Uniformity Clause by preventing Atlanta from annexing the areas beginning on July 1, 2016. However, the Municipal Annexation Statutes delegate *municipalities* limited power to annex territories, while House Bill 514 exercises the *General Assembly's* exclusive power to incorporate municipalities.

“To begin with, the general law on which Atlanta relies for its purported authority to annex the communities does not permit a city to annex territory that is already part of another city,” the opinion says. And under House Bill 514, “the communities were already part of the City of South Fulton when Atlanta’s annexations would have become effective on July 1, 2016.” House Bill 514 clearly states that the sections which incorporate South Fulton and define its boundaries “became effective when the Governor approved the act, which he did on April 26, 2016.” “Once the communities were incorporated along with the rest of South Fulton, Georgia Code § 36-36-32 (a), a general law, prevented Atlanta from annexing them.” More importantly, the opinion says, “the trial court was correct in concluding that the annexation power of cities is subordinate to the General Assembly’s power to annex and incorporate.” The state Supreme Court has previously explained that the Uniformity Clause “was intended to insure that once the legislature entered a field by enacting a general law, that field must thereafter be reserved exclusively to general legislation and could not be open to special or local laws.”

“Because the City of Atlanta did not annex the five communities before they became part of the City of South Fulton by the terms of House Bill 514, a constitutionally valid local act, the trial court’s ruling that Atlanta’s annexations were invalid was correct,” the high court concludes.

Attorneys for Appellant (City): Emmet Bondurant, David Brackett, Robert Ashe III, Robert Highsmith, Jr., Joseph Young

Attorneys for Appellees (Mays): Josh Belinfante, Kimberly Anderson

MARTIN V. SIX FLAGS OVER GEORGIA II, L.P., ET AL. (S16G0743)

SIX FLAGS OVER GEORGIA II, L.P., ET AL. V. MARTIN (S16G0750)

The Supreme Court of Georgia has reinstated a \$35 million jury award given to a young man left permanently brain-damaged from a beating he received while waiting for a bus after visiting Six Flags Over Georgia.

In this high-profile **Cobb County** case, the high court has upheld the finding that the amusement park was liable for the young man’s injuries, but it has reversed that portion of the Georgia Court of Appeals’ decision that threw out the jury’s award and ordered a full retrial because of an error in the apportionment of damages.

“This case stands for the common sense proposition that a property owner does not escape liability for an attack that begins on its premises simply because the victim moves outside the premises before the attack is completed,” says today’s unanimous opinion, written by **Justice Britt Grant**. “We now expressly adopt this narrow principle, and hold that although the landowner’s duty is to maintain safety and security within its premises and approaches, liability may arise from a breach of that duty that proximately causes injuries even if the resulting injury ultimately is completed beyond that territorial sphere.”

The Court went on to explain that the case “falls within the realm of the ordinary case in which liability and the calculation of damages sustained are distinct from the apportionment of fault.” “We thus conclude that the apportionment error here requires a retrial only as to

apportionment, and we reverse the judgment of the Court of Appeals to the extent it ordered this case to be retried in its entirety.”

According to the record, on July 3, 2007, Joshua Martin, 19, went to Six Flags amusement park with his brother and friend to celebrate the friend’s acceptance into college. Earlier that day, unknown to Martin, a throng of young men affiliated with a gang-like group called the “YGL,” who were dressed similarly and included several off-duty Six Flags employees, had accosted and threatened two young families inside the Six Flags park and later in the parking lot. The families had alerted Six Flags security officers, who confronted and reprimanded the young men before releasing them back into the park. Shortly before 9:00 p.m., the park’s closing time, Martin, his brother and friend exited the park and walked to a nearby hotel so Martin could use the restroom. By the time they returned to Six Flags property in front of the park entrance to await the arrival of a Cobb County Transit (CCT) bus, they had missed the 9:00 bus, according to briefs filed in the case. The trio sat on a guardrail situated on Six Flags property near the park entrance to wait for the next bus. After noticing a large group of similarly-dressed young men that by then had swollen in ranks to about 40, and hearing murmurings from the group about a fight, the trio left the rail headed toward the CCT bus stop. The group, which included those who had earlier accosted the two families, followed them and without provocation, began beating Martin with brass knuckles, knocked him to the ground and repeatedly stomped on him. The attack left Martin in a coma for seven days with severe and permanent brain damage.

Martin’s attorneys filed a lawsuit against Six Flags, alleging it was liable for his injuries under Georgia Code § 51-3-1 for failing to exercise ordinary care to keep the park premises and approaches safe for him as its “invitee.” Specifically, the statute says: “Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.” They also filed civil assault and battery claims against four of his assailants and additional “John Doe” defendants. Martin’s attorneys argued that Six Flags was well aware its park was located in a high-crime area and there had been gang activity in the past in the park itself, including with the involvement of some of its employees. Prior to the attack on Martin, gang-related criminal activity inside the park had occasionally spilled over to the areas outside the park, and incidents were of particular concern at the park’s closing time, as park goers were funneled into parking lots and nearby bus stops, Martin’s attorneys argued.

Six years after the attack, a Cobb County jury awarded Martin \$35 million. The jury apportioned a total of 8 percent of the fault to the four men who were convicted of the assault on Martin for a total of \$2.8 million. It apportioned the remaining 92 percent of the fault to Six Flags, entering a judgment of \$32.2 million, plus \$541,093.12 for pre-judgment interest, as well as court costs and post-judgment interest. Six Flags appealed to the Georgia Court of Appeals, which in November 2015 affirmed Six Flags’ liability, rejecting its argument that Six Flags owed no “duty of ordinary care because the bus stop where Martin was attacked was not, as a matter of law, part of its ‘premises or approaches’ within the meaning of Georgia Code § 51-3-1.” Nonetheless, the Court of Appeals ordered a new trial, finding that the verdict form had failed to list two additional individuals that Six Flags claimed were involved in the attack and thus should also have shared in the apportionment of Martin’s damages. Martin and Six Flags both appealed

to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in determining that Six Flags could be held liable for Martin's injuries and, assuming liability was proper, whether an error in the apportionment of damages required a full retrial.

As to the first question, in today's 37-page opinion, the high court concludes that, "Because the attack that caused Martin's injuries began while both he and his assailants were on Six Flags property, Six Flags' liability is not extinguished simply because Martin stepped outside the property's boundaries while attempting to distance himself from his attackers."

The evidence at trial showed that the physical attack on Martin was perpetrated outside the boundaries of Six Flags' property. "But the evidence also reflects that Martin's injuries were the culmination of a continuous string of events that were planned on Six Flags property, were executed at least in part on Six Flags property, and were the result of a failure by Six Flags to 'exercise ordinary care to protect [its] invitee from unreasonable risks' that Six Flags understood, and even tried to obscure from its patrons," the opinion says. "Under those circumstances, the question put to this Court is whether Six Flags can evade liability for the foreseeable consequence of its failure to exercise ordinary care in keeping its premises safe, simply because its patron had moved off those premises in an attempt to distance himself from his attackers. The answer to that question is no."

"As we have held in the context of on-premises crime, the foreseeability of future criminal acts may be established by evidence of prior criminal acts of a 'substantially similar' nature to those at issue, such that 'a reasonable person would take ordinary precautions to protect his or her customers...against the risk posed by that type of activity.'"

Evidence that the landowner knew a volatile situation was brewing on the premises can also establish foreseeability. "Here, a gang-related attack on a park patron was reasonably foreseeable, both in the abstract and on the particular night in question," the opinion says. "There was evidence that gang members had infiltrated the ranks of the Six Flags employee base and that Six Flags management was aware of this fact; that disturbances by gang members at the park were routine and often a topic of daily security briefings; that the men's employee locker room was adorned with gang graffiti; and that one gang-related fight had previously migrated from the park to a nearby bus stop, culminating in a drive-by shooting."

"Six Flags' knowledge of these risks – as well as its attempts to keep that information from the public – were also documented at trial," today's opinion says.

As to the issue of apportionment, Georgia's apportionment statute states that "once liability has been established and the damages sustained by the plaintiff have been calculated, the trier of fact must then assess the relative fault of all those who contributed to the plaintiff's injury – including the plaintiff himself – and apportion the damages based on this assessment of relative fault."

"Thus, once liability has been established, the calculation of total damages sustained by the plaintiff is the first step, and the allocation of relative fault and award of damages according to that allocation is a distinct second step. There is no reason these two steps cannot be segregated for purposes of retrial."

Therefore, "we conclude that the trial court's apportionment error does not require a full retrial, but rather requires retrial only for the apportionment of damages," the opinion says.

“Accordingly, we reverse the judgment of the Court of Appeals insofar as it held that a full retrial is required, and we remand for further proceedings consistent with this opinion.”

Attorneys for Appellant (Martin): Michael Terry, Naveen Ramachandrappa, Benjamin Thorpe, Gilbert Deitch, Andrew Rogers, Michael Neff, T. Shane Peagler

Attorneys for Appellee (Six Flags): Laurie Daniel, Vernon Strickland

SMITH V. THE STATE (S17A0139)

The Supreme Court of Georgia has upheld the murder conviction of a caregiver who locked an elderly disabled veteran out of her house after sending him outside in freezing temperatures to catch a bus that never came. Hours later, his frozen body was found face down outside the woman’s back door.

Today’s opinion, written by **Justice Britt Grant**, recounts numerous incidents witnessed by a number of people, including police, neighbors, and Waffle House employees, who over a period of time were made aware, time and again, of the plight of Arthur Pelham.

According to the facts at trial, beginning in 2008, Dale El Smith became the paid caregiver for Pelham, a mentally disabled Vietnam veteran who earned benefits from the U.S. Department of Veteran’s Affairs and received Social Security payments as well. The V.A. contracted with Smith to care for Pelham, and she agreed to rent a room to him in her split-level home in Clayton County, where she also cared for other disabled persons, providing supervision, monitoring their medications, and preparing the residents’ meals. Pelham and the others lived downstairs while Smith lived upstairs.

The V.A. also contracted with Sarah’s Adult Daycare center in Riverdale to care for Pelham Monday through Friday from 7:00 a.m. to 6:00 p.m. The V.A. contracted with a transportation service to drive Pelham to and from the daycare center. Smith signed a contract acknowledging that the daycare center would be closed on days when the Clayton County schools were closed due to inclement weather.

On January 6, 2014, both Clayton County schools and the adult daycare center closed due to freezing temperatures. One of Smith’s neighbors, O.O., saw Pelham sitting outside by himself on the steps of Smith’s house at about 7:00 a.m. Another neighbor saw Pelham waiting outside by Smith’s mailbox around 8:00 a.m. O.O.’s mother drove by Smith’s house at about 8:30 a.m. and Pelham flagged her down. Pelham was dressed in khakis, a t-shirt, and a light jacket, and was shaking from the cold. He told O.O.’s mother that he was waiting on the bus to take him to daycare. When she told Pelham that he should go inside, Pelham responded, “She won’t let me in.” After noticing Smith’s car parked in the driveway, O.O.’s mother instructed Pelham to knock and ring the bell, which he said he had already done; she then drove away at about 9:15 a.m. Pelham was still in the driveway when she left. At about 10:00 a.m., O.O. again saw Pelham standing outside Smith’s home near the mailbox. After she returned home from work at around 5 p.m. that day, O.O. sent her son, Reddick Glover, outside to check on the family’s dog. Glover discovered Pelham collapsed, lying face down outside Smith’s back door. Glover called to his mother, who ran to grab a jacket while her son summoned help. Although Smith came outside and saw Pelham, she went back into the house without rendering any aid to Pelham or asking anyone to call for help.

Emergency personnel and law enforcement responded to the 911 call, arriving at 5:22 p.m., but they were hindered from reaching Pelham by aggressive dogs in Smith’s backyard.

They later said Smith walked over to Pelham, looked at him, and walked back inside, ignoring their requests to secure the dogs. A neighbor finally helped secure the dogs and emergency medical services personnel were able to get to Pelham. After some delay, Smith came to her door but refused to give law enforcement officers any information about Pelham's medical history. While inside the house, officers observed that there was no heat in the downstairs portion where Pelham and other residents lived. The only source of heat for the residents was a small oven that was turned on and left ajar. Smith said she had been home all day watching TV. She denied knowing that the daycare was closed, that Pelham was left outside all day, or that he had knocked on the door or rung the doorbell. But she admitted she had never given Pelham, or any of the other residents, a key to the house.

Meanwhile EMS took Pelham, who was unconscious and covered in urine, to Regional Medical Center where he was treated for hypothermia and "frozen extremities." Attempts to revive Pelham were unsuccessful, and according to the medical examiner, Pelham died from hypothermia due to exposure to freezing temperatures.

In August 2014, a Clayton County grand jury indicted Smith for felony murder and two counts of cruelty to a person age 65 or older. At Smith's trial, multiple witnesses testified that residents of Smith's home often were found wandering around the neighborhood improperly dressed for the temperatures. O.O. previously saw Pelham knocking on Smith's door asking for food. Once she saw Pelham lying in the street in the middle of the night. Another neighbor testified seeing Pelham miles away from home standing on the side of the road after dark. A third neighbor testified she saw Pelham wandering in the street with no water when the temperature was about 95 degrees outside. Multiple law enforcement officers also testified concerning various 911 calls involving Pelham. One officer said he found Pelham walking along a highway in the blistering heat, disoriented and unsteady. Another, who responded to a 911 call, met Pelham on the street outside Smith's house. Inside, he discovered dog and human feces on the floor and spoiled food in the refrigerator. He also noted there was no heat in the downstairs area where residents lived. In addition, Waffle House employees placed multiple 911 calls regarding Pelham because he often was at the restaurant unsupervised for extended periods. And the bus driver who provided transportation to and from the adult daycare center observed that Pelham was the only client who waited alone outside his residence, and he did so in all types of weather.

Following the March 2015 trial, the jury found Smith guilty of all charges and she was sentenced to life in prison. Smith then appealed to the state Supreme Court, arguing that the evidence was insufficient to support her convictions because she did not know, nor did she have reason to know, that Pelham was not at the daycare facility.

"But contrary to Smith's contentions, there is more than sufficient evidence to show that she acted with the requisite intent," today's opinion says.

Unlike malice murder, felony murder does not require "malice" or the intent to kill. "Felony murder does, however, require that the defendant possess the requisite criminal intent to commit the underlying felony."

Here, the underlying felony was cruelty to an elderly person, which according to statutory law, a person supervising the welfare of a disabled adult or elder person commits when the caretaker "willfully deprives" that person "of health care, shelter, or necessary sustenance to the extent that the health or well-being of such person is jeopardized."

“Here, the evidence at trial showed that Smith was the primary caregiver for Pelham; that the temperatures were freezing outside; that she refused to allow Pelham back into the house; that she therefore deprived him of shelter and sustenance throughout the day; and that he died as a result of the deprivation of shelter,” today’s opinion says.

The jury was entitled to reject Smith’s claim that she did not know the day care center would be closed that day because she had signed a form acknowledging she understood the center would be closed for inclement weather. Smith also knew Pelham could not get back inside the house after she locked the door because she never gave him, or any other resident, a key.

“This evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that Smith willfully deprived Pelham of shelter and necessary sustenance and that his death was the result of Smith’s felonious action,” the opinion says.

Smith also argued that she was deprived of effective assistance of counsel by her trial attorney in violation of her constitutional rights, both by the attorney’s failure to investigate and the failure to submit jury instructions that would inform jurors they could also consider whether Smith was guilty of the less serious crimes of involuntary manslaughter or reckless conduct.

“We disagree on both fronts,” today’s opinion says. “Her claim of ineffective assistance of trial counsel cannot succeed because she has failed to show that her trial counsel’s investigation was deficient in any way.”

As to her second claim regarding jury instructions, “Smith failed to establish deficient performance,” the high court concludes. “Judgment affirmed. “All the Justices concur.”

Attorney for Appellant (Smith): Darrell Reynolds

Attorneys for Appellee (State): Tracy Lawson, District Attorney, Kathryn Powers, Dep. Chief Asst. D.A., Elizabeth Baker, Dep. Chief Asst. D.A., Samuel Olens, former Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

THE STATE V. HAYES (S16G1723)

The state Supreme Court has reversed a Georgia Court of Appeals ruling, finding that the lower appellate court was wrong to reverse a man’s guilty plea to burglary and other offenses on the ground that the **Fulton County** judge improperly participated in the man’s plea proceedings, rendering his plea “involuntary.”

In today’s unanimous opinion, **Justice Michael Boggs** writes for the high court that the judge neither participated in plea negotiations, nor was the information he gave to the man prior to his plea impermissible.

“The Court of Appeals therefore erred in reversing Hayes’ conviction,” the opinion says.

In February 2010, the State indicted Marion S. Hayes for burglary, aggravated assault, possession of tools for the commission of a crime, and misdemeanor obstruction of a law enforcement officer. The State filed a notice of its intent to seek recidivist punishment under Georgia Code § 17-10-7 (a) and (c). Georgia Code § 17-10-7 (a) states that for sentencing purposes, a person who has at least one prior felony conviction when he is convicted of a new felony must “be sentenced to undergo the longest period of time prescribed for the punishment” of the newly-convicted offense. When he was indicted for the 2010 burglary, Hayes had already been convicted of at least three prior burglaries, and this would be his fourth. Georgia Code § 17-10-7 (c) requires that a person with at least three prior felony convictions “serve the maximum

time provided in the sentence of the judge based upon” the newly-convicted offense and that such person would “not be eligible for parole until the maximum sentence has been served.”

However, as is relevant in this case, § 17-10-7 (a) also adds that “the trial judge may, in his or her discretion, probate or suspend the maximum sentence prescribed for the offense.” And while subsection (c) prohibits parole, it does not dispense with the trial court’s discretion to probate or suspend part of a sentence.

On the eve of trial, Hayes entered a guilty plea and was sentenced to 20 years, the first seven of which would be in prison with the remaining 13 on probation. At the plea hearing, the judge said the following to Hayes: “I believe you’ve been recidivised by the State, which means if you’re sentenced – you are found guilty and you are sentenced, you could be facing up to 20 years. And by recidivised, because you have I think three priors, if you were sentenced to 20 years you will serve every day of that in prison.” The judge then informed Hayes he still had the opportunity to pursue a guilty plea, but that if he did not do so, “we are going to have a trial and you are facing 20 years and you would serve every day of it if you are found guilty. And that was the sentence imposed by the court...I want to be sure you understand what you are looking at.”

In August 2015, Hayes filed a motion, asking to appeal his plea and sentences, even though he had missed the deadline to do so. The trial court granted Hayes’ motion and he then appealed. In May 2016, the Court of Appeals ruled that the trial “court effectively advised Hayes that it had no intention of probating or suspending any portion of his sentence if he proceeded to trial” by stating that he would serve “every day of [the 20-year sentence] in prison.” And this “impermissible participation by the trial court in the plea-negotiation process ‘rendered the resulting guilty plea involuntary.’” The Court of Appeals reversed Hayes’ convictions and sentence and sent the case back to the trial court, stating that Hayes and the State could enter into new plea negotiations or Hayes could proceed to trial. The District Attorney, representing the State, then appealed to the Georgia Supreme Court.

In today’s opinion, the high court has ruled in favor of the State and says the Court of Appeals was wrong.

While Uniform Superior Court Rule 33.5 (A) states that, “The trial judge should not participate in plea discussions,” here, the judge’s comments did not implicate plea negotiations. “Telling a defendant that he *could be* sentenced *up to* 20 years is not the same as telling a defendant that he *would be* sentenced to 20 years,” the opinion says. Furthermore, the judge told Hayes that if he went to trial, he’d be facing 20 years and would serve every day of that sentence *if* he were found guilty *and* sentenced to 20 years. “Both statements are clearly conditional, and explain the *maximum* sentence that Hayes could face upon conviction.”

The judge’s explanation of the potential maximum sentence “was carefully expressed in conditional language, avoiding any positive statement of what sentence might be imposed after a trial or plea,” the opinion says. “And in informing Hayes of the potential maximum sentence, the trial court was attempting to communicate to Hayes the gravity of the decision he faced as well as the potential consequences of that decision.”

Because Hayes raised other potential errors related to his guilty plea, the case is being sent back to the Court of Appeals for resolution of his remaining enumerations of error.

Attorneys for Appellant (State): Paul Howard, Jr., District Attorney, Kevin Armstrong, Sr. Asst. D.A.

Attorney for Appellee (Hayes): Sarah Gerwig-Moore

GEORGIA MOTOR TRUCKING ASSOCIATION ET AL. V. GEORGIA DEPARTMENT OF REVENUE ET AL. (S17A0430)

The Supreme Court of Georgia has upheld a **Fulton County** court’s dismissal of a lawsuit by the Georgia Motor Trucking Association and other motor carriers challenging as unconstitutional a Georgia statute that allows revenue from local taxes on motor fuel to be spent on things other than “public roads and bridges.”

“We affirm the dismissal of the plaintiffs’ complaint because the history and context of the Motor Fuel Provision [of the Georgia Constitution] reveals that ‘motor fuel taxes’ are limited to per-gallon taxes on distributors of motor fuel, and do not include sales and use taxes imposed on retail sales of motor fuels,” **Justice Nels Peterson** writes for a unanimous court.

In September 2015, the Georgia Motor Trucking Association, J & M Tank Lines, Inc., F & W Transportation, and Prolan Logistics LLC filed a lawsuit against the Georgia Department of Revenue, State Revenue Commissioner Lynette Riley, and State Treasurer Steve McCoy seeking to certify a class action consisting of “Georgia domiciled motor carriers who purchase motor fuel in the state of Georgia.” The motor carriers, which are generally freight shipping and trucking companies, alleged that legislation enacted in 2015 by the Georgia General Assembly (House Bill 170), provides for taxes on motor fuels, but improperly allows the proceeds of those taxes to be used for purposes other than the maintenance and construction of public road and bridges. They argued that the Motor Fuel Provision of Georgia’s Constitution states: “An amount equal to all money derived from motor fuel taxes received by the state...is hereby appropriated...for all activities incident to providing and maintaining an adequate system of public roads and bridges in this state...” They contended that under House Bill 170, while the “Local Motor Fuel Taxes” are assessed at the local level, the tax revenue is collected by the State and distributed for “unconstitutional” purposes, including to fund capital outlay projects such as administrative buildings, bicycle paths, sidewalks and jails, according to briefs filed in the case. In their lawsuit, the motor carriers sought a “declaratory judgment,” asking the trial court to declare that the Revenue Department and Commissioner were spending motor fuel taxes on improper purposes based on House Bill 170, which they requested the trial court to find unconstitutional. They also sought a “writ of mandamus,” asking the court to require officials to spend the motor fuel tax revenue in accordance with the Georgia Constitution. In the alternative, they requested that the tax revenue be returned to cities and counties with a “specific limitation and restriction that it be used only for roads and bridges.” And they sought “extraordinary relief” and mandamus to preserve the “status quo,” requiring the State to pay the disputed taxes, which would be *prospectively collected*, into an escrow account during the litigation. “Without interlocutory extraordinary relief, tens of millions of dollars has been and will continue to be collected in illegal taxes,” the motor carriers argued in their complaint. Finally, the motor carriers requested payment for their attorneys’ fees.

In response, the Revenue Department filed a motion to dismiss the lawsuit, arguing 1) that sovereign immunity – a legal doctrine that protects state government and its agencies from being sued – barred all declaratory judgment actions against the State; 2) that mandamus was improper because the motor carriers had other legal remedies available; and 3) that House Bill

170 was constitutional. The trial court granted the State’s motion and dismissed the case, concluding that the mandamus claims failed because the motor carriers had an adequate legal remedy, and because neither the Commissioner nor the Treasurer had a legal duty to monitor or control local spending for roads and bridges. The trial court ruled the other claims were barred by sovereign immunity. The trial court concluded that in the alternative, House Bill 170 was not unconstitutional because the challenged sales taxes were not “motor fuel taxes” within the meaning of the Constitution. Georgia Motor Trucking and the other motor carriers then appealed to the Georgia Supreme Court.

In today’s opinion, the high court concludes that despite the number of issues raised by the parties about jurisdiction, procedure, and the merits, “one issue disposes of the whole case.” All of the motor carriers’ claims fail if local sales and use taxes imposed on the retail sale of motor fuel are not “motor fuel taxes” as that term is used in the Motor Fuel Provision of the Constitution, the opinion says. “We conclude that they are not, and thus the trial court properly dismissed Plaintiffs’ complaint in its entirety.”

A significant portion of today’s 25-page opinion is devoted to a recounting of the history of taxes on motor fuels in Georgia because “we must construe a constitutional provision consistent with the meaning of its text at the time it was adopted.” The history begins in 1927 when the Georgia General Assembly first passed an act authorizing state taxes on motor fuels.

“The historical development of the Motor Fuel Provision demonstrates that the term ‘motor fuel taxes’ means those motor fuel taxes levied on distributors, not the local sales and use taxes generally applicable to all sorts of tangible personal property,” the opinion says.

“Contrary to Plaintiffs’ claims, the local sales and use taxes authorized by House Bill 170 are separate and distinct from the taxes under [Georgia Code] § 48-9-3 and are not ‘motor fuel taxes’ as that term is used in the Motor Fuel Provision. As a result, Defendants had no duty to appropriate for public roads an amount of revenue equal to the proceeds from local sales and use taxes, and Plaintiffs’ mandamus claims fail.”

“Because Plaintiffs’ claims for equitable and declaratory relief hinge on a duty to so appropriate the revenues from sales and use taxes, these claims, even if not barred by sovereign immunity, fail as well. Plaintiffs’ request for attorneys’ fees is derivative of their substantive claims and similarly fails. We affirm the trial court’s dismissal of Plaintiffs’ complaint.”

Attorneys for Appellants (Carriers): W. Pitts Carr, Alex Weatherby

Attorneys for Appellees (State): Christopher Carr, Attorney General, W. Wright Banks, Jr., Dep. A.G., Alex Sponseller, Sr. Asst. A.G., J. Scott Forbes, Asst. A.G.

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorney:

* Jeffrey W. Harris

IN THE MATTER OF: JEFFREY W. HARRIS (S17Y1372)