



## Supreme Court of Georgia

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## SUMMARIES OF OPINIONS

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### **CLAYTON COUNTY V. CITY OF COLLEGE PARK ET AL. (S17A0076)**

The Supreme Court of Georgia has thrown out a lower court's decision involving the allocation of alcohol tax revenue collected at Hartsfield-Jackson Atlanta International Airport.

In light of its recent decision in *Lathrop et al. v. Deal et al.*, the high court is sending the case back to the lower court to consider whether the City of College Park's claims in its lawsuit against **Clayton County** are barred by sovereign immunity – the legal doctrine that protects the government and its departments from being sued without the government's consent.

Central to the case is the dispute between the City of College Park and Clayton County over the proper collection and allocation of alcohol taxes at the Atlanta airport. The airport is owned and operated by the City of Atlanta but is located primarily within the geographic limits of Clayton County. A sizable portion is located in an area of Clayton County that is incorporated within the limits of College Park, but some of the airport's businesses sit in unincorporated sections of the County.

In 1983, the Georgia legislature enacted Georgia Code § 3-8-1 (e) as part of the Alcoholic Beverage Code. The provision states that the "proceeds of the taxes which the county and the municipality are authorized by law to impose and collect on the sale, storage, and distribution of alcoholic beverages at the airport shall be equally divided by the county and the municipality." For more than 30 years since the enactment of § 3-8-1, Clayton County and College Park had a policy by which vendors of alcoholic beverages at the Atlanta airport remitted one half of the excise tax revenues to the County and one half to the City. The City now argues this approach technically never did comply with the requirements of the Constitution and the Code as the County was "collecting" such monies outside its authorized jurisdiction.

In February 2014, the County sent a letter to all the airport’s alcohol distributors and vendors instructing them not only to remit to the County 50 percent of the taxes from the sale of distilled spirits in portions of the airport situated within College Park’s limits, but also to remit *all* taxes from the sale of distilled spirits in sections of the airport situated in unincorporated areas of Clayton County. The City objected and solicited an opinion from the state Attorney General. In a July 2014 letter, the Attorney General’s office responded that “Clayton County is not authorized to impose a tax on alcoholic beverages at the same location where the City of College Park is authorized to impose such a tax.” It also noted that Georgia Code § 3-8-1 (e) “plainly provides that the proceeds of the taxes on the sale, storage, and distribution of alcoholic beverages at the airport are required to be divided equally between the City of College Park and Clayton County.” The City forwarded the letter to the County and requested that it remit the \$2.5 million in alcoholic beverage tax monies the City claimed the County had wrongfully collected the last 30 years since § 3-8-1 became effective in 1983.

When the County did not respond, the City sued in March 2015 in Fulton County Superior Court. The complaint contained 14 counts, including a request for a “declaratory” judgment, asking the court to declare that all collected airport alcoholic beverage tax monies were to be equally divided between College Park and Clayton County, including those from parts of the airport in unincorporated areas of the County. The City also sought a declaration that Clayton County was precluded from collecting taxes from airport alcoholic beverage transactions that occur in College Park’s limits. College Park filed a motion asking the court for “summary judgment” on the declaratory judgment counts. (A judge grants summary judgment upon deciding that a jury trial is unnecessary because the facts of the case are undisputed and the law falls squarely on the side of one of the parties.) Clayton County filed a motion requesting a “judgment on the pleadings,” i.e. asking the court to rule in its favor based on the formal written statements of its claims and defenses. Among other things, the County argued in the pleadings that based on sovereign immunity, the County was shielded from lawsuits seeking a declaratory judgment. In October 2015, the trial court issued an order denying the County’s motion and granting the City’s. The trial court ruled that the Alcoholic Beverage Code permitted the City to impose an alcoholic beverage tax only within its municipal limits and the County to impose such a tax only in the unincorporated areas of the County and that neither could impose or collect the taxes within the other’s taxing jurisdiction. The trial court further determined that once the taxes were properly collected, § 3-8-1 (e) of the Code required that they remit to each other half the collected proceeds. The County then appealed to the State Supreme Court.

In today’s decision, written by **Justice Michael Boggs**, the high court points out that while the County’s appeal was pending, it decided another case less than two weeks ago – *Lathrop et al. v. Deal et al. (S17A0196)* – which involved a similar issue. As in this case, the plaintiffs in *Lathrop* argued that sovereign immunity did not bar claims involving an alleged violation of the Constitution.

“We concluded that such a claim is barred and reiterated that the State and its officials in their official capacities cannot be sued without its consent,” today’s opinion says. “The trial court’s holding that sovereign immunity did not apply for the reason argued by the City is erroneous in light of *Lathrop*. However, as discussed at oral argument of this case, there is a threshold question of whether sovereign immunity applies at all in suits between political subdivisions of the same sovereign (like the City and the County), a question that the trial court

did not address and the parties have not adequately briefed. It is a complex and important question, and one that we are reluctant to address in the first instance without affording the trial court an opportunity to consider the question and without complete briefing by the parties.”

“To permit a more thorough consideration of this difficult question, we remand for the trial court to address it, with the benefit of full briefing, including briefing by amici curiae with an interest in this issue,” today’s opinion says.

**Attorneys for Appellant (County):** Richard Carothers, Thomas Mitchell, Amy Cowan

**Attorneys for Appellees (City):** Steven Fincher, Winston Denmark, Emilia Walker, Eugene Smith, Jr.

### **DAVIS V. THE STATE (S17A1152)**

A man convicted of murdering his girlfriend after pleading guilty to the crime will get a new hearing under an opinion by the Supreme Court of Georgia.

With today’s unanimous ruling, written by **Justice Carol Hunstein**, the high court is sending the case back to the **Bibb County** Superior Court to determine whether the attorney who shepherded through Brandon Sherod Davis’s guilty plea rendered “ineffective assistance of counsel,” in violation of Davis’s constitutional rights.

According to the facts presented by the State, Davis was romantically involved with Chassity Lester and they had a child together. On April 1, 2013, while Davis was housesitting for a friend on Flamingo Drive in Macon, Lester went to visit Davis in an attempt to collect some child support. The two got into an argument, and according to the State, Davis picked up a hammer and struck Lester in the head, then stabbed her with a knife, killing her. Davis then dropped off Lester’s body at an undisclosed location in nearby Warner Robins. After dumping the body, according to the State, he called 911 using Lester’s phone. He was seen with blood on his pants and driving Lester’s car. The State claimed it had several witnesses who would testify that on the morning of April 2, Davis called them and said Lester had been raped and murdered. Because law enforcement agencies in Houston County did not locate Lester’s body until later that day, the State concluded Davis knew about the murder of Lester before law enforcement did. DNA evidence found at the Flamingo Drive house where Davis was housesitting, as well as DNA evidence collected from Lester’s car, showed that the blood found at both was Lester’s.

In September 2013, Davis was indicted for malice murder and felony murder. In March 2016, he pleaded guilty to felony murder and was sentenced to life in prison with the possibility of parole after 30 years. Two weeks later, his attorney filed a Motion to Withdraw Plea of Guilty alleging “manifest injustice” based on his attorney’s ineffectiveness for failing to adequately investigate and prepare for trial. At a hearing on the motion, where Davis was still represented by the same attorney, Davis alleged that his guilty plea counsel was ineffective because he had not had enough time to prepare for trial. In response to Davis’s motion, the trial judge reminded Davis he had indicated at the plea proceeding that he was voluntarily entering his plea; that he had had sufficient opportunity to discuss his case with his attorney; and that he was satisfied with his attorney’s representation. The judge then said, “At no point during this proceeding until after you had been sentenced did anyone broach the subject of you not having enough time. That sounds to me like buyer’s remorse, and as far as I’m concerned is not a valid reason to withdraw a guilty plea, based on what’s in the record.” Davis’s attorney was quick to note that the

allegation of manifest injustice was “more a psychological influence that rises to the level of coerced into accepting the plea.”

Although Davis raised a claim of ineffective assistance, the trial judge did not appoint new counsel or receive evidence on the claim. The judge nevertheless denied Davis’s motion. Davis then appealed to the Georgia Supreme Court. After the case was docketed in this Court, Davis received new counsel, who reasserted the ineffectiveness claim in his appeal.

In today’s opinion, “we reverse and remand this case for the trial court to hold a hearing on Davis’s ineffectiveness claim with current new counsel.”

“After sentencing, a defendant may withdraw a guilty plea ‘only to correct a manifest injustice,’ such as where the defendant was ‘denied effective assistance of counsel, or the guilty plea was entered involuntarily or without an understanding of the nature of the charges.’”

“However, because Davis was represented by the same counsel at both his guilty plea hearing and on his motion to withdraw guilty plea, Davis could not have raised a claim of ineffective assistance at that time.” The opinion quotes a 1991 Georgia Supreme Court decision in stating that “an attorney cannot reasonably be expected to assert or argue his or her own ineffectiveness.”

“Instead, the earliest practicable moment Davis could have properly raised a claim of ineffectiveness is with new counsel on appeal,” the opinion says. “Accordingly, as this was the first time Davis could have properly raised a claim of ineffective assistance of guilty plea counsel, we remand his case to the trial court for a hearing and determination on this issue.”

“Furthermore, to the extent that the trial court considered Davis’s claim of ineffective assistance without first appointing new counsel, and then ruled on the merits of such a claim, this was reversible error.” (A “reversible error” is a legal mistake made at the trial court level that is so significant the judgment must be reversed on appeal.)

**Attorneys for Appellant (Davis):** Ashley Cooper, M. Devlin Cooper

**Attorneys for Appellee (State):** K. David Cooke, Jr., District Attorney, Myra Tisdale, Asst. D.A., Christopher Carr, Attorney General, Patricia Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

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**IN DISCIPLINARY MATTERS**, the Georgia Supreme Court has ordered that the following attorney be **suspended for five years or until he is reinstated to the practice of law in Tennessee, whichever occurs earlier, with conditions for reinstatement:**

\* David R. Sicay-Perrow      **IN THE MATTER OF: DAVID R. SICAY-PERROW**  
**(S17Y1439)**

The Court has accepted in a 7-to-2 vote the petition for voluntary discipline and ordered the **1-year suspension with conditions for reinstatement** of attorney:

\* John Michael Spain      **IN THE MATTER OF: JOHN MICHAEL SPAIN**  
**(S17Y1287)**

(Justices Keith Blackwell and Nels Peterson dissented from the suspension, stating they were not convinced the one-year suspension was necessary.)

The Court has **rejected as an inappropriate sanction the petition for voluntary discipline seeking a 6-to-12 month suspension** of attorney:

\* Richard Allen Hunt

**IN THE MATTER OF: RICHARD ALLEN HUNT**  
**(S17Y1073)**

The Court has found that the following attorney has ordered the **reinstatement** to the practice of law in Georgia of attorney:

\* L. Nicole Brantley

**IN THE MATTER OF: L. NICOLE BRANTLEY**  
**(S16Y1235, S16Y1236, S16Y1237, S16Y1238, S16Y1239)**