



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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STATE OF GEORGIA V. SMITH ET AL. (S17A1992)

The Supreme Court of Georgia has reversed a **Chatham County** judge and ruled that when three young men go on trial for the highly publicized murder of a Savannah State College co-ed, the jury will hear evidence the trial judge had ruled was inadmissible.

State prosecutors hope to prove at trial that on Jan. 21, 2013, **Kevin Lenard Smith**, Roderick “Rod” Demione Parrish, and Jordan Lamar Campbell attempted to rob Rebecca Lorraine Foley when she arrived home at her apartment on the Southside of Savannah, GA. Foley, 21, was a student at Savannah State University. As Foley arrived in her red Volkswagen Beetle, the three men, all in their early 20s, approached with a gun. Foley attempted to drive away, but the men shot at her through the rear passenger window. They then fled the scene in a get-away vehicle driven by a fourth man, James Pastures, leaving Foley to bleed to death. The State hopes to prove that all four men were members of the gang, the Bloods. The men went into hiding, escaping detection until May 2013 when Smith was arrested on unrelated aggravated assault charges from a March 2013 shooting. Authorities determined that the gun used in the March shooting was the same caliber of gun used to kill Foley. During questioning about the March shooting, Smith stated he had purchased the firearm in March 2013 from someone he did not know well, by the name of “Jarod” or “Rod” (as in Roderick Parrish), according to the State. Ballistics testing confirmed that the weapon used in the March 2013 shooting matched the ballistics from the Foley crime scene. Eventually, the men became concerned that Pastures, the driver in the Foley case, was talking to police. The State hopes to prove that subsequently, on Jan. 19, 2014, Pastures was murdered by gang members Shaqeal Speaks and Henry Sanders.

In August 2016, Smith, Parrish, and Campbell were indicted for malice murder, felony murder and other crimes related to Foley's death. Sanders and Speaks were indicted for murder and other crimes related to Pastures' death. In November 2016, Parrish's attorney filed a motion objecting to the State's proposed use of Smith's statement that he had bought a gun from "Rod" Parrish. Following a hearing, the trial judge entered an order blocking admissibility of Smith's statement unless Smith chose to testify and Parrish's attorney had an opportunity to cross-examine him, based on the U.S. Supreme Court's 1950 decision in *Crawford v. Washington*. In *Crawford*, the high court held that cross-examination is required to allow the admissibility of prior out-of-court testimony of witnesses who have since become unavailable. The State then filed a motion to sever Smith's trial from that of the others, concerned that if he was not tried separately, prosecutors would be limited in their use of Smith's prior statement to law enforcement about the gun used to kill Foley. The judge denied that motion. The State then appealed the trial judge's ruling to the Georgia Supreme Court.

"The trial court found that because Smith's statement was not 'clearly inculpatory' of Parrish, severance of Smith's trial from Parrish's trial was not mandated. But the trial court's analysis should not have ended there," **Justice Michael P. Boggs** writes in today's unanimous opinion. Because the court found that Smith's statement did not directly "inculcate" – or incriminate – Parrish, "it should have concluded further that the statement would be admissible against Smith with an instruction to the jury to consider the statement only against him."

"Here, Smith's statement that he bought the gun from Parrish after the murder is not directly inculpatory of Parrish, and so it would be admissible against Smith with an instruction to the jury to consider the statement only against Smith," the opinion says. "The trial court therefore erred in ruling that the statement is wholly inadmissible." The high court therefore reverses the trial court's ruling on Parrish's motion to exclude Smith's statement and remands "this case for further proceedings consistent with this opinion."

Attorneys for Appellant (State): Margaret Heap, District Attorney, Frank Pennington, II, Asst. D.A.

Attorneys for Appellee (Smith et al.): Richard Darden

THE MAYOR AND ALDERMEN OF GARDEN CITY V. HARRIS ET AL. (S17G0692)

In a 7-to-2 decision, the Supreme Court of Georgia has reversed a Georgia Court of Appeals decision that would have allowed a lawsuit to go forward against the Mayor and Aldermen of Garden City, GA.

A couple had sued the City in **Chatham County** State Court after their 6-year-old daughter fell through the bleachers at a city-owned stadium. The City argued it was not liable for her injuries under the state's Recreational Property Act. But the trial court ruled that the City was not protected from liability by the Act, and on appeal, the Court of Appeals agreed.

In today's Supreme Court opinion, **Presiding Justice Harold Melton** writes for the majority that because the plain language of the Act "shields a landowner from potential liability under the circumstances presented here, the Court of Appeals erred in concluding otherwise, and we must reverse."

According to the facts of the case, in November 2012, **Willie and Kristy Harris** took their children to an annual youth football tournament at the Garden City Stadium, which is owned and maintained by the City. The stadium is surrounded by a high fence and there is a

locked gate at the entrance, with a ticket booth adjacent to the gate. Spectators older than 6 years old were charged an admission fee of \$2. The Harrises paid the fee for themselves and for one of their older children. They did not have to pay a fee for two of their younger children, including 6-year-old Riley. During the game, Riley and her siblings left their seats on the upper section of the bleachers to go to the concession stand. After buying a pickle, Riley returned to where her parents were sitting. As she walked across the bleachers, Riley slipped and fell through the bleachers about 20 feet to the ground below. Riley was transported by ambulance to Memorial Health University Medical Center in Savannah, where she spent five days in the hospital with a broken arm, ruptured spleen and collapsed lung.

Willie and Kristy Harris filed a lawsuit against the Mayor and Aldermen of Garden City, seeking to recover damages for their daughter's injuries. They claimed the stadium bleachers were in a dangerous condition caused by Garden City's negligence and its failure to comply with applicable codes.

At issue in this case is the interpretation of Georgia's Recreational Property Act. That Act states in section 51-3-23 that "an owner of land who...invites or permits without charge any person to use the property for recreational purposes does not thereby:...2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed." Section 51-3-25 of the same Act states, "Nothing in this article limits in any way any liability which otherwise exists:...2) For injury suffered in any case when the owner of land charges the person or persons who enter or go on the land for the recreational use thereof...."

Garden City filed a motion asking the court for "summary judgment" in its favor, arguing that because Riley was not one of the persons who was charged a fee to use the City's property for recreational purposes, the City could not be held liable under the Recreational Property Act. (A judge grants summary judgment after determining that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) Following a hearing, the trial court denied Garden City's motion for summary judgment. Garden City then appealed the pre-trial ruling to the Court of Appeals, which in November 2016 upheld the trial court's decision. Specifically, the Court of Appeals concluded that, "the admission fee charged by the City for entrance into the stadium was a charge within the meaning of the Recreational Property Act." The appellate court further found that "notwithstanding that the City chose not to charge very young children, including Riley, to enter the facility, the stadium was not open to the public without charge." Garden City then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred.

In today's opinion, the majority concludes that it did err. "The statute specifically and unambiguously references 'any person' who is not charged a fee to use a landowner's property for recreational purposes as being such a 'person' to whom the landowner does not owe a duty of care," the opinion says. "Because the statutory text of § 51-3-23 is clear and unambiguous, we attribute to the statute its plain meaning of shielding landowners from potential liability to individual persons whom they have invited to use their property for recreational purposes free of charge...." As the introduction to the Act states: "The purpose of this article is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting the owners' liability toward persons entering thereon for recreational purposes."

Under the statute, "it is plain that, in any case where the injured party is a person who has been charged a fee to use the landowner's property for recreational purposes, the landowner

would not be immune from potential liability to such paying persons, because the landowner only receives the protections of § 51-3-23 with respect to those persons who have not been charged a fee to use the property for recreational purposes.”

“Because the injured party in this case was not charged a fee to use the City’s property for recreational purposes, the City was shielded from liability for that party’s injuries as a matter of law by the Recreational Property Act,” the majority opinion concludes. “Accordingly, the City was entitled to summary judgment in this case, and the Court of Appeals erred in concluding that it was not.”

In the dissent, **Justice Carol Hunstein** writes that for “decades the Georgia courts have held that a landowner is shielded from liability pursuant to § 51-3-23 only where their property is open to the public for a recreational purpose *without charge*. Here, there is no question that the City’s football stadium was open to the public for a recreational purpose and that the City charged an admission fee to enter the premises. Applying § 51-3-25 (2) and Georgia’s well-established case law, I would conclude that the City is not exempted from liability under the Recreational Property Act.” The majority’s decision “effectively overturns well-settled case law without explanation,” says the dissent, which is joined by Justice Robert Benham.

The majority has responded in its opinion, stating that contrary to the dissent, “we have done nothing in our ruling today to overrule any of our prior case law. We do not specifically address any of the case law referenced by the dissent because (1) not a single one of those cases involves a scenario where some members of the public were charged a fee to use a landowner’s property for recreational purposes but other injured persons were not, and (2) the plain language of the Recreational Property Act simply controls here.”

Attorneys for Appellant (Garden City): Patrick O’Connor, James Gerard, David Mullens
Attorney for Appellee (Harrises): C. Dorian Britt

HALL COUNTY BOARD OF TAX ASSESSORS V. WESTREC PROPERTIES, INC.
(S17A1421)

HALL COUNTY BOARD OF TAX ASSESSORS V. PS RECREATIONAL PROPERTIES, I. (S17A1422)

HALL COUNTY BOARD OF TAX ASSESSORS V. CHATTAHOOCHEE PARKS, INC.
(S17A1423)

HALL COUNTY BOARD OF TAX ASSESSORS V. MARCH FIRST, INC. (S17A1424)

HALL COUNTY BOARD OF TAX ASSESSORS V. AMP III-LAZY DAYS, LLC
(S17A1425)

The Supreme Court of Georgia has ruled against the **Hall County** Board of Tax Assessors and in favor of five Lake Lanier marinas who had successfully appealed their tax assessments in Hall County Superior Court.

In today’s unanimous opinion, **Justice Michael P. Boggs** writes that because the Board failed to follow state law and schedule a settlement conference within 45 days of receiving the marinas’ notice they planned to appeal, “we affirm” the lower court’s ruling.

According to the facts of the case, the five marinas lease shoreline property on Lake Lanier from the U.S. Army Corps of Engineers. All five have added, and own, improvements to the marinas such as docks, swim platforms, bathhouses, and even restaurants and stores, which are assessed for ad valorem taxation purposes by the County. In 2015, the County changed the

nature of the assessment, and as a result, the appraisal valuations were far higher than they had been in previous years. Before 2015, the docks and additions were valued and taxed separately as personal property, such as automobiles. After the change, however, they were included within the value of the companies' leasehold interest and valued and taxed as attachments to the realty. Specifically, between 2014 and 2015, the assessments for:

- * Westrec Properties rose from \$161,383 to \$4.9 million, nearly a 3,000 percent increase;
- * PS Recreational Properties rose from \$1.26 million to \$24.5 million, more than a 1,800 percent increase;
- * Chattahoochee Parks rose from \$396,751 to \$13.2 million, more than a 3,200 percent increase;
- * March First rose from \$845,188 to \$4.3 million, more than a 400 percent increase;
- * AMP III-Lazy Days rose from \$1.23 million to \$5.5 million, nearly a 350 percent increase.

Following receipt of the County's 2015 Notice of Assessment for their properties, all five appealed the appraisal valuations to the Hall County Board of Equalization. At a hearing, their attorneys appealed the 2015 assessment on the grounds of uniformity and valuation and argued the proper value of their properties should be the same as the amount for 2014. Their attorneys also asserted that the properties should be taxed as personal property rather than as real property. (Personal property is generally considered property that is movable as opposed to real property or real estate.) Following the hearing, the Board of Equalization upheld the assessments.

On Jan. 1, 2016, House Bill 202 went into effect, extensively amending Georgia Code § 48-5-311 that deals with ad valorem tax appeals. One change was a requirement that within 45 days of a taxpayer's notice to the superior court that it planned to appeal a decision by the Board of Equalization, the Board of Tax Assessors had to schedule a "settlement conference." The statute says that if at the end of the 45-day review period, the board of tax assessors elects not to hold a settlement conference, "then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal."

The marinas filed their "Notice of Appeal" on Jan. 8, 2016 and each included a check to the Hall County Clerk of Superior Court for \$210 to cover the filing fee. However, the Board of Tax Assessors failed to issue a notice of a settlement conference within the 45-day deadline, which would have been Feb. 22, 2016. On March 8, 2016, the marinas' attorneys mailed notice of the Board's failure to provide notice of a settlement conference and demanded that the Board "enter into the records of the board of tax assessors" that each marina's stated value was the 2014 value, not the higher value listed in the 2015 Notice of Assessment. The marinas' attorneys also requested they be reimbursed for the legal costs of litigating the matter. The Board of Tax Assessors sent a letter March 17, 2016 refusing to change the stated values in the records. On June 10, the Board's attorneys emailed the marinas' attorneys, giving notice they were scheduling a settlement conference for June 20, 2016. The settlement conference was subsequently held, but the parties were unable to agree on a fair market value of the properties, and the litigation proceeded. In July, 2016, the Hall County judge ruled in favor of the marinas, ordering that the Board of Tax Assessors enter into its records the 2014 value of the marinas and reimburse them for attorneys' fees. The Board then appealed to the state Supreme Court, arguing

in part that the Act is unconstitutional because it usurps the function of the judiciary and thus violates the constitutional separation of powers clause.

Among other things, the Board argued that the termination of the appeal, based on the failure to meet the requirement to schedule a settlement conference, divests the superior court of “jurisdiction” – or its authority – after it has already taken jurisdiction over the appeal. It argued that such legislative action interferes with the superior court by taking away its power to decide a case already pending in its court.

“We disagree,” today’s 18-page opinion says. “The requirements imposed by the Act do not remove a case from the jurisdiction of the superior court. Rather, they are part of an administrative procedure that, like many others, imposes threshold conditions before the appeal reaches the jurisdiction of the superior court.” “The Act does not change this long-standing administrative process, but simply provides for additional requirements to be met, by both the Board and the taxpayer, before the appeal is ‘officially filed in superior court,’”

“The Board failed to give the required notice within the 45 day time period mandated by § 48-5-311 (g) (2), and therefore elected not to have a settlement conference,” the opinion concludes. “It is accordingly subject to the penalty provided by the legislature in the same subsection.” The trial court therefore did not err in ruling in favor of the marinas.

Attorney for Appellant (Board): Joseph Homans

Attorneys for Appellees (Marinas): J. Ethan Underwood, Lauren Giles

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

* Javin Andrews (Cobb Co.)

ANDREWS V. THE STATE (S17A1728)

(Andrews was 15 years old when he shot 23-year-old cabdriver Ricardo Francois in the back of the head, killing him, after hailing the cab to take him to Cumberland Mall. Francois had been a cabdriver for five days when he was killed.)

* Samuel Rickey Blackwell (Cobb Co.)

BLACKWELL V. THE STATE (S17A1928)

* Patricia Ann Brown (Sumter Co.)

BROWN V. THE STATE (S17A1755)

(The Supreme Court has upheld Brown’s felony murder conviction that was based on robbery, but it has vacated her conviction for robbery, which should have been “merged” into the murder conviction for sentencing purposes.)

* William Burke (DeKalb Co.)

BURKE V. THE STATE (S17A1495)

* Neddrick Green (Tift Co.)

GREEN V. THE STATE (S17A1872)

* Blake Ramone Harris (Walton Co.)

HARRIS V. THE STATE (S17A1938)

* Jonathan Johnson (Decatur Co.) **

JOHNSON V. THE STATE (S17A1479)

* Joshua Anthony Lee (Decatur Co.) **

LEE V. THE STATE (S17A1480)

- * Joseph Franklin Norris, Sr. (Henry Co.) **NORRIS V. THE STATE (S17A1587)**
 (The high court has upheld Norris’s felony murder conviction, but because the crime of aggravated assault by shooting the victim with a gun was the underlying felony for the felony murder conviction, it should have merged with the felony murder conviction for sentencing purposes. “Accordingly, we vacate Norris’s conviction and sentence for aggravated assault by shooting the victim with a gun,” the opinion says.)

- * Anthony Vasher Prothro (Carroll Co.) **PROTHRO V. THE STATE (S17A1399)**

** Johnson and Lee were co-defendants

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

- * Ricky W. Morris, Jr. **IN THE MATTER OF: RICKY W. MORRIS, JR. (S17Y1329)**

- * Cameron Shahab **IN THE MATTER OF: CAMERON SHAHAB (S17Y2016)**

The Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorneys:

- * Lorne Howard Cragg **IN THE MATTER OF: LORNE HOWARD CRAGG (S18Y0269)**

- * Larry Bush Hill **IN THE MATTER OF: LARRY BUSH HILL (S18Y0256)**

- * Robert Jutzi Howell **IN THE MATTER OF: ROBERT JUTZI HOWELL (S18Y0142)**

- * Richard V. Merritt **IN THE MATTER OF: RICHARD V. MERRITT (S18Y0387)**

- * Christopher Mark Miller **IN THE MATTER OF: CHRISTOPHER MARK MILLER (S18Y0264)**

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

- * Clarence R. Johnson **IN THE MATTER OF: CLARENCE R. JOHNSON, JR. (S17Y1918)**