



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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CHRYSLER GROUP, LLC V. WALDEN ET AL. (S17G0832)

The Supreme Court of Georgia has ruled against **Chrysler** automaker in its appeal of a verdict in a lawsuit brought by the parents of a 4-year-old boy who burned to death in a Jeep Cherokee that was hit from the rear.

According to the evidence, on the afternoon of March 6, 2012, Emily Newsome was driving her 4-year-old nephew, Remington “Remi” Walden, to a tennis lesson in Bainbridge, GA in a 1999 Jeep Grand Cherokee. The child was sitting in the back seat. As Newsome was waiting to make a left-hand turn, Bryan Harrell, who was driving a Dodge Dakota pickup truck, plowed into the back of the Cherokee. The Jeep’s fuel tank, which was located behind the rear axle, ruptured in the collision. Gasoline poured from the tank, ignited and the car was quickly engulfed in flames. Newsome was able to climb out the driver’s side window, but the child could not escape and although she tried, Newsome was unable to get Remington out. The child, who was heard screaming, died from injuries caused by the fire.

Remington’s parents, **James Bryan Walden** and Lindsay Newsome Strickland, sued the Chrysler Group, LLC and Harrell in **Decatur County**. They alleged that Chrysler acted with a reckless disregard for human life in the design of the 1999 Jeep Cherokee due to its rear-mounted fuel tanks, and they sought damages for wrongful death and pain and suffering.

At trial, the parents’ attorneys asked a Chrysler witness to confirm the Chrysler CEO’s annual compensation. They claimed that during an investigation by the National Highway Traffic Safety Administration into several Jeep models, Chrysler’s CEO had intervened by meeting with political appointees to the federal agency and that subsequently, the Jeep Cherokee

model was excluded from a recall that included other models. Chrysler's attorneys objected to the request regarding the CEO's compensation, but the trial court overruled the objections.

Following a nine-day trial, the jury awarded the boy's parents \$120 million in wrongful death damages and \$30 million in pain and suffering damages. The jury found that Harrell, who did not appeal, was 1 percent at fault for Remington's death, and Chrysler was 99 percent at fault. Chrysler filed a motion requesting a new trial, which the court denied on the condition that Walden and Strickland accept a lower wrongful death verdict of \$30 million and a pain and suffering verdict of \$10 million, which the parents accepted. Chrysler then appealed to the Georgia Court of Appeals, but the state's intermediate appellate court upheld the trial court's judgment. It approved the admission of the CEO's compensation, finding that "evidence of a witness's relationship to a party is always admissible," and that the CEO's compensation made the existence of his "bias in favor of Chrysler more probable." Chrysler then appealed to the Georgia Supreme Court.

In today's opinion, **Justice Britt C. Grant** writes that under Georgia's "new" Evidence Code, enacted in 2013, compensation evidence is neither "always admissible," nor "never admissible." Rather judges must determine whether its unfair prejudice outweighs its "probative" – or useful – value. "We conclude that under the particular circumstances of this case – where the jury's evaluation of the bias and credibility of Chrysler's CEO were central to the allegations in the case because the CEO was alleged to have specifically interjected himself in a federal safety investigation to the detriment of the plaintiffs – we cannot say that the prejudicial effect of the evidence so far outweighed its probative value that its admission was clear and obvious reversible error," the 27-page opinion says. "Accordingly, although we disagree with the rationale of the Court of Appeals, we ultimately affirm its judgment."

The opinion emphasizes that Georgia courts must "consider party-wealth evidence under the parameters of the new Evidence Code. This is yet another example of the 'new evidence world' in which we live."

"This is not to say that party-wealth evidence is now admissible in Georgia – it is frankly quite difficult to see how it would be relevant in nearly any case, at least not involving punitive damages," the opinion says. "Nor does this case establish that the kind of compensation evidence at issue here always comes in – it often doesn't. But the proper objection is made under Rule 403 [of the Evidence Code], and must be based on unfair prejudice outweighing probative value, not on a blanket ban. This is a fact-specific analysis."

"We disapprove of interpreting the Court of Appeals' opinion as allowing all employee witnesses to be questioned in every case about their or their colleagues' compensation," today's opinion says. However, based on the facts of the case, witnesses' compensation *may* be relevant and admissible to show bias. "Whether evidence of the employee's income directly implicates a party's wealth, so as to render its admission unduly prejudicial, is a factor to be considered by the trial court in determining the evidence's admissibility," the opinion says. "Courts should be mindful that 'the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences.'"

Attorneys for Appellant (Chrysler): Thomas Dupree, Jr., Rajiv Mohan, Bruce Kirbo, Jr., M. Diane Owens, Terry Brantley, Bradley Wolff

Attorneys for Appellees (Walden): James Butler, Jr., David Rohwedder, James Butler, III, George Floyd, Michael Terry, L. Catharine Cox

THE STATE V. HUDSON (S17G0739)

The Supreme Court of Georgia has ruled that under the Georgia Code of statutes, a superior court judge did not have the authority to reduce the original prison sentence of a juvenile who was tried as an adult for an armed robbery he committed when he was under the age of 17.

With today’s opinion, the high court has ruled that the **Fulton County** Superior Court erred in reducing **Timothy Hudson’s** original prison sentence for armed robbery. “We therefore reverse the Court of Appeals judgment to the extent that it affirmed that reduced sentence,” **Justice David E. Nahmias** writes for the majority in today’s 8-to-1 decision.

In January 2015, shortly after he turned 16, Timothy Martez Hudson and two accomplices robbed a man of his vehicle, wallet and cellular telephone by threatening the man with a handgun. All three were arrested later that day. Hudson was indicted as an adult for hijacking a motor vehicle, armed robbery, aggravated assault, possession of a firearm during commission of a felony, fleeing and attempting to elude, and obstruction of a law enforcement officer. In June 2015, Hudson entered into a negotiated plea, pleading guilty to armed robbery with a firearm, aggravated assault, possession of a firearm during commission of a felony, and obstruction of a law enforcement officer. In exchange, the State decided not to prosecute him for the hijacking and fleeing counts. The State agreed to the imposition of a sentence of 10 years with five to serve in prison on the armed robbery count. Hudson was also sentenced to five years to serve on the aggravated assault count, and 12 months to serve on the obstruction count. Each of these sentences was to be served concurrently. Hudson was also sentenced to five years for firearm possession to run consecutively. Because he was 16 and still a juvenile, he began serving his sentences at a youth detention facility.

As Hudson’s 17th birthday approached, the superior court held a hearing under Georgia Code § 49-4A-9 (e) to review Hudson’s commitment order at the request of the Department of Juvenile Justice. The statute says in part that when certain children who have been sentenced in superior court are approaching their 17th birthday, “the department shall notify the court that a further disposition of the child is necessary....The court shall review the case and determine if the child, upon becoming 17 years of age, should be placed on probation, have his or her sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authorized by law.”

After hearing testimony about Hudson’s excellent behavior at the youth detention facility where he was being kept, the judge – citing § 49-4A-9 (e) – modified Hudson’s sentences to allow him to serve the remaining nine years of his armed robbery sentence on probation. State prosecutors appealed to the Court of Appeals, arguing that the superior court was not authorized to probate the remainder of Hudson’s sentence. But in a 6-to-3 decision, the intermediate appellate court upheld the superior court’s ruling. The State then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred.

“Because the discretion given to sentencing courts by § 49-4A-9 (e) is limited by the mandatory minimum sentence requirements of [Georgia Code] § 17-10-6.1, we hold that the

superior court erred in reducing Timothy Hudson’s original prison sentence for armed robbery,” today’s opinion says.

The mandatory minimum for armed robbery under § 17-10-6.1 is 10 years in prison with no possibility of probation or parole. The only exception to this mandatory minimum sentence is if the trial court, the State, and the defense have agreed to a sentence below the minimum. Here, they agreed to – and the trial court imposed – a sentence of 10 years to serve five. Hudson served one year behind bars before the judge ordered he be released on probation.

“Regardless of whether § 49-4A-9 (e) applies to Hudson, his sentence for armed robbery is controlled by § 17-10-6.1,” the opinion says. “Under that statute, the mandatory minimum 10-year prison sentence for armed robbery cannot be probated without the State’s agreement. Accordingly, the superior court’s reduction of Hudson’s armed robbery prison sentence was improper.”

“Put simply, the inclusion of probation and sentence reduction in the list of possible outcomes in § 49-4A-9 (e) does not implicitly bestow on superior courts the authority to reduce mandatory minimum prison sentences that is expressly and emphatically revoked by § 17-10-6.1,” today’s opinion concludes.

In a “special concurrence,” **Justice Carol Hunstein** agrees with the outcome of this case but disagrees with the application of § 17-10-6.1, saying that § 49-4A-9 – when read together with two other statutes – does not permit the superior court to modify Hudson’s sentence. In addition, given that most of the applicable statutes were recently enacted or amended, she encourages the General Assembly “to revisit these provisions to clarify the discretion of the superior court regarding the placement of juveniles (who have not yet attained the age of 17) who are convicted and sentenced as an adult for ‘a felony punishable by death or by confinement for life’ or ‘to a certain term of imprisonment.’”

In a dissent, **Justice Robert Benham** disagrees with the majority’s conclusion that the trial court erred in modifying Hudson’s sentence for armed robbery “because I conclude the superior court may modify juvenile sentences in accordance with § 49-4A-9 (e), including the sentence imposed in this case, even though the offense Hudson was convicted of is one that otherwise requires a mandatory minimum sentence.” In this case, “I cannot conclude that the trial court abused its discretion by modifying Hudson’s sentence for armed robbery in consideration for what the trial judge found to be exemplary conduct while he was detained at the juvenile facility,” the dissent says.

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

Attorney for Appellee (Hudson): Brandon Bullard

CITY OF UNION POINT ET AL. V. GREENE COUNTY (S17A1878)

GREENE COUNTY V. CITY OF UNION POINT ET AL. (S17X1879)

The Supreme Court of Georgia has partially reversed a ruling that was in favor of the government of **Greene County** in its dispute with the **City of Union Point** over who should pay for public services such as emergency 911 dispatch, animal control, building inspections, and library services under the Service Delivery Strategy Act (Georgia Code § 36-70-20).

In today’s 6-to-3 ruling, written by **Justice Michael P. Boggs**, the high court has upheld a lower court’s ruling that the doctrine of sovereign immunity does not bar all the City’s claims

in its lawsuit against the County under the dispute resolution process provided by the Act. However, the Supreme Court has reversed the trial court's decision finding that process unconstitutional, vacated some of the court's findings under the dispute resolution process, and remanded the case for further proceedings.

In 1999, the County and several municipalities within its borders entered into intergovernmental agreements for the provision of various public services and allocation of their costs between the County and the municipalities, including the City. Those agreements were amended from time to time and filed with the Georgia Department of Community Affairs. In June 2015, the County terminated its 911 dispatch services intergovernmental agreements with Union Point and notified the City of the need to renegotiate the agreement, asking the City to pay \$30,000 annually to help defray the costs of the radio dispatch services.

In October 2015, the City sued the County after it claimed the County threatened to terminate the provision of 911 emergency dispatch services to Union Point's police and fire departments using the County's radio system. The County claims it never threatened to terminate the dispatch of 911 calls but merely wanted the City to make payments, as other cities such as Greensboro did, to help support County personnel in continuing to provide services to the City and help defray the cost of upgrades to the County's radio system.

The Service Delivery Strategy Act (§ 36-70-20) was enacted in 1997 to discourage government waste caused by the duplication of services and to reduce the amount incorporated area taxpayers subsidize county services that are provided primarily for the benefit of unincorporated areas in the county. The Act was amended in 2000, adding a new section – § 36-70-25.1 – that set up a “mechanism to resolve disputes” between a county and its municipalities. If the parties could not reach a resolution, the amended statute provided that “any aggrieved party may petition the superior court and seek resolution of the items remaining in dispute.”

After unsuccessful mediation as prescribed by the Service Delivery Strategy Act, the County provided notice that it was terminating all its intergovernmental agreements with the City of Union Point, which also affected animal control, building inspections, municipal elections, recreation and library services. The County reiterated its previous termination of the dispatch services agreement. The City then sought court review under § 36-70-25.1 (d) (2). Following a two-day March 2017 “bench trial” (before a judge with no jury), the trial court ruled in favor of the County, finding that § 36-70-25.1 (d) (2) was unconstitutional because it violated the separation of powers by delegating legislative authority to the judicial branch. The judge also ruled that the doctrine of sovereign immunity – i.e. the legal doctrine that protects the government or its departments from being sued without the State's consent – barred the City's claims requesting an injunction, a “declaratory” judgment (a judge's declaration of the legal rights of the parties), and payment of the City's legal costs. The City of Union Point then appealed to the Georgia Supreme Court.

Under the Georgia Constitution, “The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver,” today's opinion says. However, passage of the Service Delivery Strategy Act creates a limited waiver of sovereign immunity. “Because the General Assembly is presumed to intend something by passage of an act, we must construe its provisions so as not to render it meaningless,” today's opinion says. “But here, as the trial court held, sovereign immunity is waived *only to the extent*

of the statute, which extends no further than the remedies specifically authorized by the Act.” Therefore, the trial court was not permitted to exceed the scope of the Act by granting relief not provided under the Act.

Not all of the City’s claims, however, arose under the Service Delivery Strategy Act, today’s opinion points out. For instance, the City asserted claims for breaches of existing intergovernmental agreements with the County, seeking an injunction to compel the County to abide by the agreements. The Service Delivery Strategy Act does not generally address the enforcement of existing intergovernmental agreements, nor does it provide to the party aggrieved by the breach. “There is no reason to conclude, therefore, that the Service Delivery Strategy Act supersedes other remedies available to a county or city for breach of an intergovernmental agreement.” Violations of such agreements generally may be addressed by the courts as breaches of contract, and in such cases, “the General Assembly has provided an express constitutional waiver of sovereign immunity,” the opinion says. The three remedies for breach of contract are restitution, damages, and specific performance. Therefore, to the extent the City sought an injunction in this case that is directed to the enforcement of the existing intergovernmental agreements and that would amount to a remedy of specific performance, “such relief is within the scope of the constitutional waiver of sovereign immunity for breach of contract and may be considered on remand,” the opinion says. “To the extent, however, that the injunctive relief sought by the City would do more than command the specific performance of existing intergovernmental agreements, it is not an appropriate remedy for breach of contract and does not fall within the Constitution’s waiver of sovereign immunity.”

Today’s 23-page majority opinion finds, among other things, that the trial court erred in ruling that the dispute resolution process prescribed under Georgia Code § 36-70-25.1 (d) (2) of the Service Delivery Strategy Act is unconstitutional. Code § 36-70-20 of the Act is a general statement of legislative intent that the process prescribed by the Act as a whole “should result in a simple, concise agreement describing which local government will provide which service in specified areas within a county and how provision of such services will be funded,” the opinion says. However, § 36-70-25.1 “does not authorize the trial court to implement, in its own discretion, these broad, aspirational goals. Rather, the General Assembly provided criteria which ‘shall be met’ in developing the service delivery strategy....” It “does not authorize the court to substitute its judgment for that of the county and municipalities with regard to the creation of a service delivery agreement, nor to adopt one party’s interpretation to the exclusion of another, and enter that in the form of a final agreement.” “The court is directed only to receive the parties’ evidence and resolve disputed issues of fact regarding the services provided and the funding of such services, and to determine whether such services and funding comply with the provisions of the law. This process does not amount to an unconstitutional violation of the separation of powers doctrine,” the majority opinion says.

In addition, the majority found that § 36-70-25.1 provides only limited remedies that the trial court may use to encourage the parties to reach a service delivery agreement. To the extent that the trial court exceeded its statutory authority in ruling on specific claims under the Service Delivery Strategy Act, the Supreme Court has vacated its order remanded the case for entry of an appropriate order.

In a dissent, **Justice Robert Benham** disagrees in part with the majority, writing that he would rule that “§ 36-70-25.1 is unconstitutional because it improperly delegates purely

legislative issues to the trial court for judicial resolution.” “The issues in dispute involve not simply a resolution of how Union Point should pay for these services, but whether the County will enter into contracts to provide these services to Union Point at all,” the dissent says. “These issues have not been resolved between the parties and no service delivery strategy has been agreed upon with respect to these governmental services. What decision is the trial court authorized to render, then, if not a decision as to, for example, an “assignment of which local government or authority, pursuant to the requirements of this article, will provide each service,’ or the ‘source of funding for each service,’ or ‘the mechanisms to be utilized to facilitate the implementation of the services and funding responsibilities’....These are legislative and even political decisions that are outside the purview of the judiciary to decide. As I see it, the judicial resolution clause of § 36-70-25.1 runs afoul of the separation of powers doctrine espoused by the State’s Constitution,” says the dissent, which is joined by Presiding Justice Harold D. Melton and Justice Carol W. Hunstein.

Attorneys for City: Andrew Welch, III, Warren Tillery, Brandon Palmer

Attorneys for County: Angela Davis, Christopher Hamilton, Kenneth Robin

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

* Travis Graves (DeKalb Co.)

GRAVES V. THE STATE (S17A1709)

* Clarence Jenkins, Jr. (Clayton Co.)

JENKINS V. THE STATE (S17A1301)

(Although the Supreme Court has upheld Jenkins’ conviction and life prison sentence for the murder of his 22-year-old son, the high court is sending the case back to the trial court to correct sentencing. The trial court erred in sentencing Jenkins to an additional five years in prison for possession of a firearm during the commission of aggravated assault, as well as an additional five years for possession of a firearm during the commission of aggravated battery. “But the underlying crimes for each possession charge were committed on the same victim, as part of the same fatal encounter,” the opinion says. Therefore, the Supreme Court is sending the case back to the trial court to sentence him on only one of the possession counts.)

* Raymond Charles McKoy (Douglas Co.)

MCKOY V. THE STATE (S17A1994)

* Ted Debaise Robinson (Bartow Co.)

ROBINSON V. THE STATE (S17A1903)