



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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DELAY ET AL. V. SUTTON, COMMISSIONER (S18A0765)

The Supreme Court of Georgia has ruled as unconstitutional the process for appointing members to the **DeKalb County** Board of Ethics.

With today's decision, the high court has upheld a superior court's ruling that the appointment process created by a recent DeKalb County local law, which delegates to private entities the power to appoint four of the ethics board's seven members, violates the Georgia Constitution's requirement that public officials be held accountable to the people.

"As these private entities do not answer to the people as required by our Constitution, they are not authorized to wield the power to appoint public officials to the DeKalb County Board of Ethics," **Presiding Justice Harold D. Melton** writes for a unanimous Court.

The makeup of the board was changed in 2016, stemming from ethics allegations that were lodged with the DeKalb ethics board in March 2015 against then-County Commissioner **Sharon Barnes-Sutton** for alleged spending irregularities. At the time, the seven members of the board were appointed and overseen by the DeKalb County CEO and the seven County Commissioners. While the complaints were pending against Barnes-Sutton, the DeKalb County legislative delegation ushered House Bill 597 through the state legislature, recreating a new board member makeup. Under the legislation, the power to appoint members of the ethics board would be given to a variety of public and private organizations, including DeKalb's legislative delegation, the county's chief superior court judge, the probate court judge, and certain private entities, including the DeKalb Bar Association, the DeKalb County Chamber of Commerce, Leadership DeKalb, and a group of colleges and universities located within the county. The

Georgia legislature passed House Bill 597, the governor signed it, and on Nov. 3, 2015, it was approved by DeKalb County voters.

Newly appointed board members were seated in January 2016. By then, Barnes-Sutton had filed a lawsuit against the ethics board and its chair, **Clara Delay**. After passage of the new legislation, Barnes-Sutton amended her complaint in March 2016 with a Petition for a “Writ of Quo Warranto,” which is Latin for “by what authority” and which is used to challenge the authority by which someone holds public office. Barnes-Sutton argued the process involved in creating the newly appointed ethics board was unconstitutional because the majority of the board’s seven members were appointed by private organizations. Barnes-Sutton argued that those members had no right to their office because no elected official had final authority over their appointments.

The trial court judge ruled in Barnes-Sutton’s favor, finding that under the state Supreme Court’s 1979 decision in *Rogers v. Medical Association of Georgia*, the appointment process created by Georgia House Bill 597 violated the Constitution because it delegated appointment power for four of the seven ethics board members to private organizations that were not subject to any confirmation by any elected governmental official or body. The DeKalb County Board of Ethics appealed that ruling to the state Supreme Court. Meanwhile, Barnes-Sutton was voted out of office in 2016.

Today’s opinion quotes the Court’s 1979 decision in *Rogers*, stating that the issues in that case were very similar to those presented here. In *Rogers*, the Court ruled that, “The General Assembly may, within constitutional limitations, establish qualifications for public office and designate a governmental appointing authority. But it cannot delegate the appointive power to a private organization.”

“As was the case with the appointed officials in *Rogers*, the appointed officials to the Board here wield government power. Also as was the case with the statute in *Rogers*, HB 597 delegates the power of appointment of officials to a public office with governmental powers to private organizations that are ‘not accountable to the people as our constitution requires,’” the opinion says. “Accordingly, the trial court correctly granted the writ of quo warranto as to the four challenged Board members appointed by private entities pursuant to HB 597, as these appointments were unconstitutional.”

Attorneys for Appellant (Delay): Darren Summerville, Angela Fox, Kurt Kastorf

Attorney for Appellee (Barnes-Sutton): Dwight Thomas

COATES V. THE STATE (S17G1949)

The Supreme Court of Georgia has ruled in favor of a man convicted and sentenced separately for each of four counts of gun possession by a convicted felon, finding that a Georgia statute permits only one prosecution and conviction for the simultaneous possession of multiple firearms.

With today’s unanimous opinion, written by **Justice Carol W. Hunstein**, the high court has reversed a decision by the Georgia Court of Appeals, vacated the man’s four separate convictions and sentences, and remanded the case to the trial court to convict and resentence him on only one of the counts.

According to briefs filed in the case, in May 2014, police executed a search warrant on two neighboring addresses in the town of Broxton in **Coffee County**. At one address, **Hubert**

Coates operated a makeshift store selling snack items and beverages; he and his wife lived at the other. Police recovered less than an ounce of marijuana during the search of the makeshift store. They recovered four firearms – a 20-gauge shotgun, a .22 caliber rifle, another shotgun and a revolver – during a search of the couple’s residence. Coates was convicted of possession of less than an ounce of marijuana and four counts of possession of a firearm by a convicted felon. The trial court sentenced him as follows: one year in prison on the marijuana charge, five years in prison on each of two of the firearm charges, five years on probation on one of the firearm charges, and a split sentence of three years in prison and two on probation on the fourth firearm charge. Because the court ruled the sentences would be consecutive, Coates was sentenced to a total of 21 years with the first 14 to be served in prison and the balance on probation.

Coates appealed to the Georgia Court of Appeals, arguing that the trial court should have merged the four firearm convictions, and for sentencing purposes, treated the simultaneous possession of multiple firearms as only one offense. The appellate court disagreed and upheld the trial court’s ruling. Coates then appealed to the state Supreme Court, which agreed to review the case to determine what is the “unit of prosecution” for the crime of possession of a firearm by a convicted felon under Georgia Code § 16-11-131 (b). The statute states that any person who previously has been convicted of a felony “and who receives, possesses, or transports *any firearm* commits a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.”

The parties’ arguments, as well as the Court of Appeals’ opinion, focused in large part on the phrase, “any firearm,” with the State arguing that “a felon who possesses a single firearm has committed a new felony, and a felon who possesses four firearms has committed four new felonies.”

But in today’s opinion, the high court disagrees. “While we agree that this term is important, this phrase must be read concomitantly with the remainder of the statute to avoid rendering any portion of the statute meaningless,” the opinion says. The word “any,” in this context, “does not imply a specific quantity; the quantity is *without limit*.”

“Reading the statute in a natural and ordinary way, it is clear that the gravamen of the offense is the general receipt, possession, or transportation of firearms received, possessed, or transported,” the opinion says. “Accordingly, we conclude that § 16-11-131 (b) is unambiguous and permits only one prosecution and conviction for the simultaneous possession of multiple firearms.”

Attorney for Appellant (Coates): Joshua Larkey

Attorney for Appellee (State): George Barnhill, District Attorney, Ian Sansot, Asst. D.A.

THE STATE V. TURNER (S18A0957)

The Supreme Court of Georgia has ruled that when a woman goes on trial in **Douglas County** for the murder of her 10-week-old baby girl, evidence seized during a search of her home must be suppressed.

Under today’s unanimous opinion, written by **Justice Carol W. Hunstein**, the high court has upheld a lower court’s ruling and found that the search was unlawful.

According to State prosecutors, on Dec. 3, 2015, **Arielle Nicole Turner** and her mother, Terry Turner, called 911 to report they had found Arielle’s 10-week-old infant, Armonii Turner, unresponsive in her crib. Emergency medical technicians arrived at the home where the two

women and baby lived and began treating the infant. Arielle went with the EMTs who transported the baby to Douglas Wellstar Hospital where she was later pronounced dead. Arielle's mother, Terry, remained at home.

Shortly after, Douglasville Police Officer Joseph Wells arrived at the home and spoke to Terry. He later testified that during the conversation, Terry asked if they could go inside and sit down because her legs hurt and it was cold outside. He followed Terry inside and they sat at the kitchen table. His purpose for entering the home was to console and comfort a distraught grandmother. He did not search the house or seize any items while inside. Detective Victoria Bender, who is a member of the Child Fatality Review Board, also responded to the scene in reference to an unresponsive infant. She entered through an already open door and sat with Terry and Officer Wells at the kitchen table where the officers continued to comfort Terry. Detective Bender also asked questions regarding Armonii's medical history so she could convey any pertinent information to hospital staff. She did not search the house or seize any items from the house at this time.

Prior to the baby being transported to the hospital, investigators had not observed any marks or bruising on the baby, nor did they see signs of foul play or evidence that a crime had been committed. When Detective Bender was notified of Armonii's death, she conveyed the information to Terry. Terry later testified that at that point, officers told her the home was a crime scene and no one would be allowed to leave or enter. More officers then began arriving at the scene, including a "crime scene technician" who began taking pictures throughout the house. Detective Bender started questioning Terry about the events leading up to her granddaughter's death. Terry testified that she never consented to the officers entering or searching her home, and she said she did not stop the officers because Detective Bender "just told me that's what they was supposed to do."

After her baby died, Arielle was returned to the house by another Douglasville police officer. About that time, the Chief Coroner for Douglas County, Mark Alcaez, also arrived at the home and began conducting a "Sudden Unexplained Infant Death Investigation." Meanwhile, Arielle answered questions by Detective Bender and pointed out to officers a number of the baby's items, including pacifiers, a bottle, and a diaper bag which contained medicine and formula. Law enforcement officers seized these items and stored them at the police department.

About four months later, the medical examiner determined that the cause of Armonii's death was homicide caused by the administering of a toxic amount of diphenhydramine, an over-the-counter medicine used to treat hay fever, allergies, cold symptoms, and insomnia.

In November 2016, a Douglas County grand jury indicted Arielle Turner for the malice murder, felony murder, and aggravated battery of her infant daughter. In June 2017, her attorney filed a motion to suppress, asking the trial court to suppress evidence of the items seized during the "unlawful search and seizure" of Turner's home on Dec. 3, 2015. At the hearing on the motion to suppress, all of the testifying officers confirmed they had not obtained a search warrant, did not have probable cause to search the house, and did not believe a crime had occurred when the search of the home took place. Rather, the coroner and officers explained they had conducted their investigation based on the Georgia Death Investigation Act (Georgia Code § 45-16-24), which requires a medical examiner's inquiry of any "unexpected or unexplained" death of a child under 7 years of age. In all, they had remained in the Turners' home for about three hours questioning witnesses, searching, photographing and videotaping the home, and

seizing evidence. Following a hearing, the trial court found that neither Arielle nor her mother had given consent for the search and granted Arielle’s motion. The State then appealed to the Georgia Supreme Court, arguing that the trial court erred in granting the motion because Arielle and her mother had consented to the search of their home. The State also argued that because the search was led by the county coroner based on the Death Investigation Act, the evidence was properly collected.

In today’s opinion, the high court disagrees. The trial court’s determination that “neither Appellee [i.e. Arielle] nor her mother voluntarily consented to the search and seizure of evidence from their home is supported by the record,” the opinion says. “Here a reasonable officer would understand that Terry’s invitation for Wells to enter her kitchen was not consent for additional officers to conduct a search of the home.”

“The record further supports the trial court’s finding that Terry merely acquiesced to the authority of the officers,” the opinion says. “The record reflects that, after the child was pronounced dead, numerous members of law enforcement responded to the Turner residence in order to investigate the death of the child without probable cause, without a search warrant, and without even a suspicion that a crime had been committed.” Yet, “at least four members of law enforcement, including a crime scene investigator (whose presence, astoundingly, no one can explain) participated in a search of Appellee’s home.”

“Giving proper deference to the trial court’s factual findings and credibility determinations, and based upon the totality of the circumstances, the record supports the trial court’s conclusion that Appellee did not voluntarily consent to the search of her home but merely acquiesced to the authority of law enforcement,” the opinion says.

Furthermore, in response to the State’s argument that the coroner led the investigation at the Turner residence pursuant to the Death Investigation Act and law enforcement had merely assisted, “the investigation at issue here was plainly led by law enforcement, not the coroner,” the opinion says.

Attorneys for Appellant (State): Brian Fortner, District Attorney, Ryan Leonard, Acting D.A., Emily Richardson, Asst. D.A.

Attorney for Appellee (Turner): Dolly Fairclough

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

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| * Quantavious Guffie (Fulton Co.) | <u>GUFFIE V. THE STATE (S18A0861)</u> |
| * Albert King (Twiggs Co.) | <u>KING V. THE STATE (S18A0824)</u> |
| * Philmore Reed (Fulton Co.) | <u>REED V. THE STATE (S18A0624)</u> |
| * Thomas E. Sessions, Jr. (Troup Co.) | <u>SESSIONS V. THE STATE (S18A0818)</u> |
| * LeVaughn Sloans (Richmond Co.) | <u>SLOANS V. THE STATE (S18A1138)</u> |
| * Michael Stallworth (Fulton Co.) | <u>STALLWORTH V. THE STATE (S18A0636)</u> |
| * Joseph E. Williams (Floyd Co.) | <u>WILLIAMS V. THE STATE (S18A0797)</u> |

