



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



SUMMARIES OF OPINIONS

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WITHERS ET AL. V. SCHROEDER, III (S17G1875)

The Supreme Court of Georgia has ruled in favor of a former **DeKalb County** judge and court administrator, dismissing the lawsuit against them.

Under today's unanimous ruling, written by **Justice Robert Benham**, the high court has reversed a Georgia Court of Appeals decision and ruled that under Georgia law, the judge and court administrator are protected by judicial immunity.

In December 2015, **Bobby Schroeder, III** sued then **Chief Judge Nelly F. Withers** and Court Administrator Troy Thompson of the former DeKalb County Recorder's Court. According to his complaint, after receiving a traffic ticket in 2013, Schroeder appeared in Recorder's Court where he was ordered to pay a fine. He claimed that he promptly paid the fine, but the staff of the Recorder's Court failed to close his case. Furthermore, he alleged, the court staff falsely informed the Georgia Department of Driver Services that Schroeder had failed to appear for his court hearing, failed to pay his fine, and stated that his driving privileges should be suspended. Subsequently, according to Schroeder, he was arrested in Rockdale County for driving with a suspended license and taken into custody before bonding out. The following month he was again arrested in Newton County for the same thing. At some point, the Recorder's Court realized it had given the Department of Driver Services incorrect information, and it sent a notice to the department withdrawing the suspension of Schroeder's driving privileges. That in turn led to the dismissal of the charges against him in Rockdale and Newton counties. Meanwhile, however, Schroeder had lost his job because of what had happened.

In his lawsuit, Schroeder asserted state law negligence claims against Withers and Thompson. He filed for damages, alleging that the defendants failed to perform their

“ministerial” duties with due care and that their actions had led to Schroeder’s arrest. In addition to the state law claims, Schroeder asserted federal claims under Title 42 of the United States Code § 1983, alleging that Withers and Thompson had violated his constitutional rights by maintaining customs and policies that caused his deprivation of liberty. These customs included chronically understaffing and underfunding the Recorder’s Court, failing to adequately train employees, failing to implement an audit system that would have caught mistakes, hiring based on a quota system that increased the rate of errors in the court’s communications with the Department of Driver Services, and failing to adequately discipline and terminate employees. Schroeder claimed that Withers and Thompson knew these customs and practices repeatedly had led to the arrest of innocent persons, yet they had failed to correct the problems.

In response, Withers and Thompson filed a motion asking the court for “judgment on the pleadings,” which is a judgment based solely on the allegations and information contained in the legal documents filed with the court. They claimed that the state law negligence claims were barred based on the doctrine of “official immunity” because Schroeder failed to allege any specific acts they had done that had caused his injury; that the state law and federal § 1983 claims were barred based on the doctrine of “judicial immunity” because all of Schroeder’s allegations “related to Judge Withers’ performance of her duties as a judge....;” and that the § 1983 claims were also barred based on the doctrine of “qualified immunity” because as the court’s supervisor, Judge Withers was performing “discretionary” duties of her job as opposed to ministerial duties and was therefore immune. (Discretionary acts are those requiring personal deliberation and judgment. Ministerial duties, on the other hand, are absolute and involve merely the execution of a specific duty. In essence, officials are afforded greater protection when they are faced with a situation that requires them to make a judgment call.) Also, Withers and Thompson argued they were entitled to official immunity because Schroeder failed to allege specific incidents prior to his alleged injuries that would have put Withers and Thompson on notice that widespread unconstitutional conduct was occurring.

In August 2016, the trial court granted Withers’ and Thompson’s motion for judgment on the pleadings, finding that Schroeder’s lawsuit against them was barred by official, judicial and qualified immunity. On appeal, the Court of Appeals reversed most of the lower court’s decision and remanded the case back to the trial court, ultimately reasoning that for each theory of immunity, it was too early in the litigation to determine whether Withers and Thompson were performing administrative rather than judicial acts. Withers and Thompson then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in holding that Withers and Thompson were not entitled to official, judicial, or qualified immunity.

“Because we conclude appellants (i.e. Withers and Thompson) are protected from suit by the doctrine of judicial immunity and its derivative quasi-judicial immunity, we reverse the Court of Appeals’ opinion” to the extent it allows Schroeder’s suit to move forward against Withers and Thompson, today’s opinion says. “The United States Supreme Court has long recognized the doctrine of judicial immunity which shields judges from being sued and from being held civilly liable for damages based on federal law as a result of carrying out their judicial duties.”

To determine whether an act is judicial in nature, a court should consider “1) whether the act is one normally performed by judges, and 2) whether the complaining party was dealing with the judge in her judicial capacity,” the opinion says. “Here, there is no question that appellee was

dealing with the recorder's court as part of its official function of adjudicating traffic offenses." Furthermore, making a report to the Department of Driver Services (DDS) "was part and parcel of the judicial process necessary to fully resolve traffic offenses pending in the court," the opinion says. "Courts have held that the act of reporting the disposition of a matter pending before a court to an interested government agency is a function that is judicial in nature and inherent to the judicial process."

"To the extent Thompson acted at the direction of Judge Withers in fulfilling the function of reporting the disposition of traffic cases to DDS, he was acting as an 'extension of the court' or 'arm of the judge' such that he is immune from suit based on quasi-judicial immunity," the opinion says.

Attorneys for Appellants (Withers): Thomas Mitchell, Angela Couch, Laura Johnson, Terry Phillips

Attorneys for Appellee (Schroeder): Harlan Miller, Gerard Lupa

GEORGIA DEPARTMENT OF HUMAN SERVICES ET AL. V. ADDISON ET AL. (S18A0803)

The Supreme Court of Georgia has reversed a **Dougherty County** court ruling that declared Georgia's Child Abuse Registry unconstitutional.

With today's opinion, the high court is sending the case back to the trial court with an order to dismiss the case, due in part to the failure of the high school teachers and administrators who challenged the registry to follow proper procedural rules.

"We cannot properly reach the merits of those challenges... – and neither could the trial court – because some of the claims are barred by sovereign immunity and the remaining ones should have been raised in the then-pending administrative proceeding also initiated by the teachers and administrators," **Presiding Justice David E. Nahmias** writes for a unanimous court. "Accordingly, we reverse the part of the trial court's order concluding that the court could decide the merits of the challenges, vacate the part of the order declaring the registry statutes and rules to be unconstitutional and granting injunctive relief, and remand with direction to dismiss the case."

The appeal in this case stems from a lawsuit brought by five Dougherty County teachers and school administrators, including **Loy Addison**. The five worked in the special education program at Albany High School. According to the State, following two incidents in which several students allegedly groped other students, a child abuse investigator for the Dougherty County Division of Family and Children Services "substantiated" reports of child abuse on the basis that the five teachers and school administrators were inadequately supervising the students in the classroom and lunchroom. Subsequently, all five were placed on the Child Abuse Registry.

A "substantiated case" means child abuse has been confirmed based upon a "preponderance of the evidence." All five school officers received "Notices of Inclusion," notifying each that he or she had been placed on the registry. Georgia law requires the name, age, sex, race, Social Security number, birthdate, and a summary of the case be included on the registry. Access to the information on the registry is available only to child abuse investigators, their designees, law enforcement, and any state agency that licenses entities related to childcare services. An individual placed on the list has 10 days after receiving notice to file a written

request for a hearing before an administrative law judge. An adverse ruling by the administrative law judge may be appealed to the superior court and then to Georgia's appellate courts.

After receiving Notices of Inclusion, Addison and the others promptly requested a hearing before the administrative law judge to appeal Frazier's determinations. Prior to the administrative hearing, the five also filed a lawsuit in Dougherty County Superior Court against the State and three of its officers in their official and individual capacities, challenging the constitutionality of the registry. In their petition, they sought a "declaratory judgment" from the court, asking the court to "declare" the registry unconstitutional, and "injunctive relief," which a court grants to command or prevent certain actions.

The defendants filed a motion to dismiss the plaintiffs' petition, arguing the claims were improper as a matter of administrative law and procedure. They also argued the suit was barred by sovereign immunity, the legal doctrine that protects the State and state employees in their official capacities from being sued. And they argued that the registry and its statutes and rules were constitutional.

Following a hearing, the trial court ruled in the teachers' and administrators' favor, declaring Georgia Code § 49-5-180 through § 49-5-187, as well as the rules and regulations governing the Child Protective Services Information System, unconstitutional. The trial court prohibited the State from including any of the five teachers and administrators as a substantiated child abuser on the computerized Child Abuse Registry and from disclosing any of the information. The State then appealed to the Georgia Supreme Court.

In today's opinion, the Court has ruled that the State and its employees in their *official* capacities "should have been dismissed from this case based on sovereign immunity. The plaintiffs' suit against the employees in their *individual* capacities is not barred by sovereign immunity, however." The doctrine of sovereign immunity "usually poses no bar to suits in which state officers are sued in their individual capacities for official acts that are alleged to be unconstitutional."

The defendants also argued the plaintiffs' lawsuit should have been dismissed by the superior court because the plaintiffs had not exhausted their available administrative remedies before seeking judicial review of their claims. Instead they filed suit in superior court before an administrative law judge had the chance to consider their arguments.

In this case, after requesting a hearing before an administrative law judge, the teachers and administrators were given a hearing date. "Consequently, the plaintiffs were not permitted to circumvent their pending administrative proceedings by raising their facial constitutional challenges in an independent superior court proceeding," today's opinion says.

"Having reviewed the record, we can understand why the plaintiffs were so upset about the way in which their names came to be put on the Child Abuse Registry and why they wanted to seek prompt relief in the superior court. But having initiated the administrative process available to challenge their listings – the process they were required to use to assert any as-applied constitutional challenges – it is clear under this Court's precedents that they could not jump off that path and head straight to court, even with facial constitutional challenges, nor could they sue the State or its officials as officials."

"The trial court should not have addressed the constitutionality of the registry statutes and rules, and we express no opinion on those questions in this case," the opinion concludes. "The case is remanded with direction to the superior court to dismiss it."

Attorneys for Appellants (State): Christopher Carr, Attorney General, Annette Cowart, Dep. A.G., Shalen Nelson, Sr. Asst. A.G., Penny Hannah, Sr. Asst. A.G., Sarah Warren Solicitor General, Ross Bergethon, Dep. Sol. Gen.

Attorneys for Appellees (Addison): Gilbert Murrah, Charles Ferencchick

IN THE MATTER OF HARRIET O’NEAL (S18Z0774)

The Supreme Court of Georgia has vacated a decision by the Board of Examiners denying a woman’s petition for a waiver for military spouses that would have permitted her to practice law in Georgia without first taking the state’s bar exam.

With today’s ruling, the high court has vacated the Board’s denial of **Harriet O’Neal’s** waiver petition and is remanding the case to the Board, directing it to “clearly apply the military waiver policy and explain why O’Neal has or has not met the waiver requirements.”

Georgia’s “Military Spouse Juris Doctor Waiver Process and Policy” states: “Recognizing that active duty military personnel are frequently transferred to duty stations in any number of states, making it extremely difficult for their attorney spouses, who, while admitted to practice in one state, may not be admitted in the state of the new duty station, the Board of Examiners seeks to accommodate the bar admission needs of attorney spouses of military personnel while still maintaining the integrity of the bar admission process.”

O’Neal filed her petition for a waiver with Georgia’s Board of Examiners in November 2017, requesting the waiver as the spouse of an active member of the military who had been transferred to Georgia. She had graduated from Louisiana State University Law School in 2014, passed the Louisiana bar exam, and been admitted to the practice of law in Louisiana in 2014.

In a January 2018 letter to O’Neal, the Board denied her petition, stating “it does not meet the applicable standard. The Board strictly enforces the eligibility requirements for admission to practice law in Georgia, as adopted by the Supreme Court of Georgia, and in this instance, concluded there was insufficient evidence of good cause for a waiver.”

In evaluating a petition under the waiver policy for military spouses, the military policy identified three things the Board of Examiners should consider: the duration of the military spouse’s practice of law; her employment history in the legal profession; and her career goals. The goal of the policy is “to delineate between those whom this State should appropriately accommodate, and those who do not meet the minimum threshold deemed necessary to protect the Bar and public,” today’s opinion says. But here, “the Board provided no specific reasons to O’Neal supporting the decision to deny her request for a waiver.”

In its briefs filed with this Court, for the first time the Board did eventually give specific reasons for denying O’Neal’s request for a waiver. However, the “benchmarks employed by the Board to assess the waiver request of a military spouse are uncertain,” today’s opinion says, and it is “difficult to ascertain what criteria the Board consider in its determination of whether a military spouse has shown good cause for a waiver. Compounding the problem of this general uncertainty, the Board, in this particular case, never provided O’Neal with any specific reasons for the denial of her waiver.” Just as it does under its general “Waiver and Process Policy,” the Board should provide a military spouse with written reasons for denial as well,” today’s opinion states.

KENNEBREW V. THE STATE (S18A0711)

Under an opinion today by the Georgia Supreme Court, a man whose murder conviction was reversed in 2016 has won his appeal to have evidence found in two backpacks suppressed if the case goes back to trial.

In today's unanimous opinion, written by **Justice Nels S.D. Peterson**, the trial court has reversed a **DeKalb County** court ruling denying the man's pre-trial motion to suppress the evidence. This is the second time this case has come before the Georgia Supreme Court.

Phillip Warren Kennebrew was tried in a joint jury trial with Mason Babbage and Samuel Hall for robbing and murdering Breyon Alexander. DNA evidence from a cigarette butt placed Kennebrew at Alexander's apartment at the time of the crimes. Kennebrew's defense was that he was merely present at the scene but not guilty of the crimes against Alexander.

"But several pieces of evidence recovered from two backpacks belonging to Kennebrew undermined this defense," today's opinion says, "particularly a knife the State suggested had been used in the stabbing of the victim, shotgun shells like some that had been stolen from the victim's apartment and recovered from a co-defendant's house, and bullets like some that had been stolen from the victim's apartment." Police had seized the backpacks belonging to Kennebrew when they arrested him at his girlfriend's dorm room at Georgia Gwinnett College.

Following the joint trial, the jury convicted Kennebrew, Babbage and Hall of murder, armed robbery and other crimes. Kennebrew was sentenced to life plus 25 years in prison. But on Oct. 31, 2016, this Court reversed Kennebrew's convictions, finding he had received "ineffective assistance of counsel" at trial based in part on his attorney's failure to pursue the suppression of the evidence found in Kennebrew's backpacks. The high court remanded the case to the trial court, stating that although it was reversing Kennebrew's convictions, "we find that the evidence presented at trial was legally sufficient to support the convictions, so the State may retry him if it chooses."

After the Supreme Court reversed his convictions, a new attorney for Kennebrew filed a motion to suppress the evidence seized from the backpack. The trial court denied his motion, concluding that the seizure of Kennebrew's backpack was "reasonable based upon facts and circumstances presented by the State at the hearing and furthermore that the items inside the backpack would have inevitably been discovered through a lawful inventory search." The trial court found that after police had handcuffed and removed Kennebrew from the dorm room, his girlfriend had given police consent to search her room, identifying Kennebrew's belongings. Kennebrew again appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the trial court erred in denying Kennebrew's motion to suppress.

In today's opinion, the high court has concluded "the trial court's ruling was wrong on the merits, and we reverse."

On appeal, the State argued the trial court's order should be upheld under either an "inventory search" theory or an "inevitable discovery" theory. An inventory search is the search of the personal property of a person who has been arrested as part of a routine administrative procedure during the booking and jailing of the suspect. The U.S. Supreme Court has ruled that an "inventory search" is an exception to the requirement of obtaining a search warrant before conducting the search. However, to qualify as an inventory search, it must be carried out based on standardized procedures. The State argued that the trial court's finding that the backpack in this case was briefly inventoried at the scene by a DeKalb police officer means that an inventory

search was performed on Oct. 20. “But this factual finding is clearly erroneous: the record contains no evidence whatsoever that Sgt. Neal searched or conducted any sort of inventory of any backpack on Oct. 20,” the opinion says. The State’s argument on appeal – that another law enforcement officer performed an inventory search on Oct. 20 – also is not supported by the evidence, and directly conflicts with the State’s concession multiple times that the backpacks were not searched until six days after Kennebrew’s arrest. “The State thus failed to carry its burden to show that an inventory search was done on Oct. 20, and absent such a search, the motion to suppress cannot be denied on that ground,” the opinion says.

The State also argued that an inventory search of the backpacks was performed on Oct. 26. But the State “points to no record evidence that the Oct. 26 search took place before the backpacks were placed in the property room,” and police procedure mandated that the inventory be performed before the backpacks were submitted to the property room. “The State has not met its burden of proving that the evidence in question was discovered in accordance with that procedure, and thus has not proven that the search conducted on Oct. 26 was a valid inventory search rather than a rummaging to discover incriminating evidence,” the opinion says.

Finally, the State failed to meet its burden of establishing a reasonable probability that the evidence in question “*would* have inevitably been discovered via a lawful inventory search.”

To the extent “that the State somehow means to argue that the evidence was discovered in an illegal search on Oct. 26 but is nonetheless admissible because it would have been discovered eventually through a later, proper inventory search, that argument fails,” the opinion says. No search on Oct. 26 took place anywhere but in the property room.

“Given the DeKalb Police policy’s requirement that an inventory search be conducted *before* submission to the property room, no later search would have qualified as an inventory search,” the opinion says. “Judgment reversed.”

Attorney for Appellant (Kennebrew): Beau Worthington, Sr.

Attorneys for Appellee (State): Peter Skandalakis, District Attorney Pro Tempore, Sheila Ross, Asst. D.A. Pro Tem

RAINES V. THE STATE (S18A0725)

The Supreme Court of Georgia has upheld the murder conviction of a young man who was 17 years old when he shot and killed a woman taxicab driver in **Upson County**.

Under today’s unanimous decision, however, the high court has vacated the young man’s sentence to life in prison with no chance of parole and is sending the case back to the trial court for resentencing in light of recent U.S. Supreme Court and Georgia Supreme Court rulings.

According to the facts at trial, on Dec. 21, 2011, a police officer was dispatched to a possible shooting on Avenue N in the city of Thomaston, GA. At the scene, the officer found a green Grand Marquis with a cab sign that had crashed into a fence outside a 7-11 convenience store. The cab’s wheels were still spinning at a high rate of speed. The driver, a woman later identified as Brandy Guined, was slumped over in the driver’s seat, unconscious and struggling to breathe. She had a gunshot wound to her upper back. She was transported to Upson Regional Hospital, but died soon after.

Investigators initially had no strong leads, but three days later, 16-year-old Marquerious Traylor approached Thomaston investigators with information about the cab driver’s death. He said that earlier the night the driver was killed, his neighbor and friend, 17-year-old **Dantazias**

Raines, had come to Traylor's back door and told him to come outside, saying he had the possibility of catching a "sweet lick" – street slang for committing a robbery. Raines asked if he could use Traylor's iPod, which had an app for making phone calls, and while Traylor went inside to grab a jacket, Raines used the iPod to call someone. Traylor later testified that Raines suggested they walk around the block, and they headed toward Avenue N. When a dark green taxicab approached, Raines flagged it down. Traylor said he saw Raines enter the cab from the back rear passenger side and brandish a gun. Traylor then ran home. As he ran, he heard a gunshot and a woman's scream, according to his testimony. Later that night, Traylor said he texted Raines, asking if he had shot the woman, to which Raines responded, "Hell, yeah." When Traylor asked why, Raines said she had tried to grab the gun and he got nervous, so he shot her.

The day after the shooting, Raines, Reginald Dawson and Terrell Searcy were riding in a car together when Dawson asked Searcy if he had heard about the "cab incident" the previous night. Raines interjected that when it happened, he had been coming from his mother's house and heard some arguing on Avenue N. He told them he heard a gunshot and a lady scream and saw the cab race by him.

Raines was arrested Dec. 24, 2011. According to officers, he did not comply with verbal commands, refused to put his hands behind his back, and after he was placed in handcuffs, became belligerent and refused to sit down.

In March 2012, an Upson County grand jury indicted Raines for malice murder, felony murder based on attempted robbery, aggravated assault with a deadly weapon, criminal attempt to commit armed robbery, and gun possession charges. He was also charged with three counts of misdemeanor obstruction of a law enforcement officer stemming from his arrest. At Raines' trial, Traylor, who had been granted immunity, testified against him. Following the March 2013 trial, the jury found Raines guilty on all counts. He was sentenced to life without parole plus 40 years in prison. Raines then appealed to the state Supreme Court.

On appeal, Raines asserted insufficiency of the evidence regarding venue, which in a criminal case is the county where the crime was committed. Raines also argued that the evidence was insufficient regarding the corroboration of accomplice testimony and the misdemeanor obstruction charges; that the judge erred in failing to instruct the jury about the law on accomplice corroboration; that the jury improperly considered materials not admitted into evidence; and that his sentence to life without parole was "void as a matter of law."

"We find the evidence sufficient, and find no plain error with respect to the jury instruction or the consideration of evidence by the jury," **Justice Michael P. Boggs** writes for a unanimous court. "We therefore affirm in part, but vacate Raines' sentence and remand this case to the trial court for resentencing in light of our subsequent decision in *Veal v. State*."

In its 2016 *Veal* decision, the high court vacated Robert Veal's life-without-parole prison sentence because he was under 18 years of age at the time of his crimes. In 2012, the U.S. Supreme Court ruled in *Miller v. Alabama* that it is cruel and unusual to mandate "life without parole sentences for those under the age of 18 at the time of their crimes" unless the judge makes a determination on the record that the defendant is "irreparably corrupt or permanently incorrigible." The State concedes that Raines must be vacated and he be resentenced in accordance with *Veal*.

As to the evidence on venue, "No witness was ever directly asked to identify the county in which the cause of death was inflicted, or in which the events surrounding the victim's death

occurred,” today’s opinion says. “But evidence was presented from which the jury could, under an appropriate instruction from the trial court, find beyond a reasonable doubt that venue was properly laid in Upson County.”

In a footnote, the opinion states that, “We have noted before that, in light of the ease with which venue generally can be proved, it is difficult to understand why the appellate courts are repeatedly faced with this issue. Nevertheless, like the Court of Appeals, we continue to see cases like this one in which venue becomes a serious issue on appeal, apparently unnecessarily.”

Attorney for Appellant (Raines): Christina Cribbs, Georgia Public Defender Council

Attorneys for Appellee (State): Benjamin Coker, District Attorney, B. Ashton Fallin, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Brock, Asst. A.G.

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

- * Michael Bennefield (Fulton Co.) **BENNEFIELD V. THE STATE (S18A1410)**
- * Perry Brown (Walton Co.) **BROWN V. THE STATE (S18A1014)**
- * Philmore Reed (Fulton Co.) **REED V. THE STATE (S18A0624)**

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **rejected a voluntary petition for a Review Panel Reprimand** based on insufficient evidence from attorney:

- * David Thomas Dorer **IN THE MATTER OF: DAVID THOMAS DORER**
(S18Y0066) (Chief Justice Harold Melton dissents.)

The Court has **accepted a petition for voluntary discipline** from attorney:

- * Matthew Thomas Dale **IN THE MATTER OF: MATTHEW THOMAS DALE**
(S18Y1023)