



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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THE STATE V. WILLIAMS (S19A0185)

The Supreme Court of Georgia has reinstated felony murder and distribution of heroin charges against **Graham Williams** for allegedly injecting heroin into a man who then overdosed and died.

With today's opinion, the high court has ruled that the **Fulton County** Superior Court prematurely dismissed the indictment against Williams by relying on testimony made at a pretrial hearing that the drug belonged to the victim, Leslie Gregg Ivey, to reach the conclusion that Williams did not "distribute" the drug, in the common sense of the word.

The Supreme Court clarifies in a footnote that the trial judge was not necessarily wrong in concluding that injecting Ivey with Ivey's own heroin at Ivey's request could not be construed as "distribution." However, at this stage in the proceedings, it was improper for the trial court to rely on such facts as they were not contained in the indictment nor did the State concede to them.

The high court is therefore remanding the case to the Fulton County court to continue with pretrial proceedings.

"Here, in dismissing the indictment, the trial court relied on facts that are not alleged in the indictment, including that the *sole* basis for the distribution charge was that Williams injected Ivey with heroin, that Williams did not own the heroin in question, that Williams played no part in its acquisition, and that Williams only injected Ivey at Ivey's request," **Justice Keith R. Blackwell** writes for a unanimous court.

Williams was indicted in February 2018 and charged with distributing heroin in violation of the Georgia Controlled Substances Act, and felony murder based on the predicate felony of distribution of heroin. In March 2018, Williams's attorney filed a "general demurrer" to the

indictment, challenging the indictment for failing to sufficiently charge a violation of the law. Additionally, his attorney filed a “plea in bar,” in which he argued that under the Georgia Medical Amnesty Act (Georgia Code § 16-13-5), Williams was immune from prosecution. The statute says that, “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation....”

In July 2018, the trial court held a pretrial hearing where the State and Williams presented evidence concerning the plea in bar. According to the evidence, on Oct. 21, 2015, Ivey, Williams, and two others met at a house in Alpharetta. Ivey wanted to use heroin that he already had obtained, and with Ivey’s consent, Williams injected Ivey with the drug. Ivey soon became unconscious and later died from an overdose. Williams presented evidence at the hearing that he had played no part in acquiring the drug, and he testified that he had sought medical help for Ivey when he became unconscious. The State, however, presented a witness who testified Williams not only did not seek help for Ivey but attempted to obstruct others’ efforts to call 911.

Following the hearing, in August 2018, the trial judge dismissed the indictment, finding there was no evidence “that the defendant purchased, much less owned the drugs involved. Nor is there any evidence that the defendant assisted in acquiring the drugs for Mr. Ivey.” The judge ruled that the actions of the defendant did not amount to possession with the intent to distribute because “the term ‘distribute’ in the context of Georgia Code § 16-13-30 is used to describe the sale of controlled substances, not the consumption of such and certainly not the injection of heroin by one person into the body and at the request of another.” The trial court ruled that this determination was fatal to both counts in the indictment and therefore dismissed the indictment. The State, represented by the Fulton County District Attorney’s office, then appealed to the state Supreme Court.

“There is an important exception to the general rule that a court cannot go beyond the four corners of the indictment in considering a demurrer,” today’s opinion says. “If the State stipulates or agrees to the facts that form the basis for the charges in the indictment, a court can rely on those facts in its consideration of a demurrer, whether or not the facts appear on the face of the indictment. In this case, however, the State never agreed or stipulated for purposes of a demurrer to a number of the facts upon which the trial court relied.”

“Although the State presented no evidence at the pretrial hearing to counter the assertions that Williams injected Ivey only at Ivey’s request and that Williams played no part in acquiring the heroin, the State was not required to do so; it never agreed to try its entire case against Williams at this pretrial hearing,” the opinion says. “Because the State never agreed or stipulated to those extrinsic facts for purposes of a demurrer, the trial court was not authorized to consider them in connection with the general demurrer. Accordingly, we reverse the dismissal of the indictment and remand the case for further proceedings consistent with this opinion.”

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

Attorneys for Appellee (Williams): Manubir Arora

DEVELOPMENT AUTHORITY OF COBB COUNTY ET AL. V. STATE OF GEORGIA ET AL. (S19A0378)

The Supreme Court of Georgia has reversed a **Cobb County** court’s refusal to validate \$35 million in revenue bonds to finance a retail development in East Cobb County that would include a new Kroger grocery store.

In today’s unanimous opinion, **Justice Keith R. Blackwell** writes that the superior court’s reasoning was flawed in concluding that Georgia Code § 36-62-2 (6) (N) does not authorize the bonds.

The case stems from the May 2018 decision by the **Development Authority of Cobb County** to issue \$35 million in revenue bonds to acquire land near the intersection of Powers Ferry Road and Terrell Mill Road. The authority planned to build a grocery store on the property and lease the facility to the Kroger Company, which would relocate a nearby Kroger store to the new facility.

Cobb County resident Larry Savage objected to the bonds and intervened as a party in the proceedings, which Georgia statutory law allows citizens to do. The Cobb County Superior Court subsequently denied validation of the bonds. The Development Authority and Kroger then appealed the decision to the Georgia Supreme Court.

In today’s opinion, the high court concludes that the lower court “misunderstood” both paragraph (6) N of Georgia Code § 36-62-2, as well as the Georgia Supreme Court’s 1999 decision in *Haney v. Development Authority* in concluding the bonds were not authorized.

The trial court determined that paragraph (6) (N) of the statute authorizes a development authority to finance a project only to the extent that it is “essential” to “the development of trade, commerce, industry, and employment opportunities.”

Georgia Code § 36-62-2 (6) (N) does indeed state that a project is eligible for public financing only to the extent that it promotes “the development of trade, commerce, industry, and employment opportunities,” the opinion says. “But nothing in paragraph (6) (N) requires that an eligible project be ‘essential’ to such development.” The word “essential” does appear in the paragraph, but only to describe the purposes for which a development authority may finance projects. “To say that ‘the development of trade, commerce, industry, and employment opportunities’ is an ‘essential’ purpose of development authorities is not to say that anything financed by a development authority must be ‘essential to such development,’” the opinion says.

The trial court also erred in relying on the Supreme Court’s decision in *Haney* to conclude that the additional jobs the new Kroger would bring are not the type of “employment opportunities” referenced in § 36-62-2 (6) (N). “To begin, it is not entirely clear what principle the superior court gleaned from *Haney*,” the opinion says. “But whatever the superior court understood *Haney* to mean, *Haney* is quite distinguishable from this case.”

“Unlike *Haney*, this case concerns the development of a facility that clearly is intended for ‘trade’ and ‘commerce,’” the opinion says. “*Haney* is nothing like this case, and the superior court was wrong to conclude that the additional employment opportunities shown by the record in this case are not ‘employment opportunities’ under paragraph (6) (N).”

Finally, the trial court erred in concluding that Georgia Code § 36-62-2 (6) (N) is unconstitutional because it violates the uniformity provision of the Development Authorities Clause of the Georgia Constitution. The trial court determined that the Development Authorities

Clause requires that “the terms and conditions of the bonds [issued by development authorities] [must] be uniform.”

“The superior court misunderstood the uniformity provision of the Development Authorities Clause,” today’s opinion says. “The plain terms of that provision require the creation of *development authorities* under ‘uniform terms and conditions.’ That provision simply says nothing at all about the uniformity of *bonds* issued by development authorities.”

“Judgment reversed,” the opinion concludes.

Attorneys for Appellants (Development Authority, Kroger): Daniel McRae, Kevin Brown, Rebecca Davis, William Holby, Letitia McDonald, Gabriel Krimm

Attorneys for Appellees (State, Savage): Larry Savage, pro se

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

- * Blackmon (McDuffie Co.)
- * Michael D. Bowman (Spalding Co.)
- * Keith A. Dozier (Bibb Co.)

BLACKMON V. THE STATE (S19A0366)

BOWMAN V. THE STATE (S19A0428)

DOZIER V. THE STATE (S19A0095)

(The Supreme Court has upheld the conviction and life-without-parole prison sentence given to Dozier for the malice murder of Gail Spencer. But it has reversed his Dozier’s conviction for *felony* theft by taking and is remanding it to the trial court with direction to enter a conviction and sentence for *misdemeanor* theft by taking.)

- * Charmane D. Goins (Gwinnett Co.)

GOINS V. THE STATE (S19A0224)

(The Supreme Court has upheld the malice murder conviction and life prison sentence given to Goins for the strangling death of Lauren Taylor. Goins appealed in part on the ground that his constitutional right to a speedy trial was violated. But the trial court failed to make the findings and conclusions regarding Goins’ speedy trial claim required for appellate review. The high court has therefore vacated in part the trial court’s order denying Goins’ motion for new trial and is remanding the case for the court to properly address his speedy trial claim.)

- * Adrian Golson (Tift Co.)
- * Jaramus Sherrod Jackson (Clayton Co.)
- * Johnny Daniel Rigsby, Jr. (Spalding Co.)
- * Jesse Lynn Rowland (Laurens Co.)
- * Harvey Walker (Clayton Co.)

GOLSON V. THE STATE (S19A0565)

JACKSON V. THE STATE (S19A0343)

RIGSBY V. THE STATE (S19A0172)

ROWLAND V. THE STATE (S19A0289)

WALKER V. THE STATE (S19A0177)

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

* Johnnie Mae Graham **IN THE MATTER OF: JOHNNIE MAE GRAHAM**
(S19Y0706)

The Court has accepted a petition for voluntary discipline and ordered the **12-month suspension** of attorney:

* Preston B. Kunda **IN THE MATTER OF: PRESTON B. KUNDA** (S19Y0959)