Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, September 10, 2019

10:00 A.M. Session

MORGAN V. THE STATE (S19A1261)

A woman who drowned her two baby daughters, telling police that she had "given her children back to God," is appealing a **Chatham County** jury's verdict of "guilty but mentally ill" rather than "not guilty by reason of insanity."

FACTS: On Oct. 6, 2015, the Savannah Chatham Metropolitan Police Department received an emergency call from **Jokeera Viola Morgan**, who told the 911 operator that she had just drowned her children and "gave them back to God." When police arrived at the home on W. 59th Street, they found the naked, unbreathing bodies of Savannah West, 8 months old, and Zyra Morgan, 18 months old. Life-saving efforts on scene were unsuccessful and both babies were ruled to have died by drowning, and the manner of death was ruled homicide. Morgan told the officers that she had killed her daughters, and she was immediately taken to police headquarters. During a four-hour interview by detectives, Morgan said she had been thinking all day about harming her children. She saw them playing, saw a plastic storage container, took it to the bathroom, and filled it with water. She then went to get Zyra, undressed her, put her in the tub, and held her under water. Morgan said the toddler fought against her. After the child stopped struggling, Morgan carefully laid Zyra's naked body in the hallway. Morgan then did the same to her infant, Savannah, although she left Savannah's body in the tub of water where police later

found her. She told the detectives that she "felt like she messed up bad." She said she had first thought about harming her daughters when she was pregnant with Savannah. She also reiterated to the detectives that she had "given her children back to God," that she wanted to end their suffering, and that she wanted to see them again in the next life. Morgan said she had called her aunt the morning of the drownings for the first time in eight months. She told the detectives that she had planned to tell her aunt what she was thinking about doing but changed her mind and instead told her that the girls were fine and that she was taking her medication as prescribed, although she later told the detectives she was not taking her medication because it did not make her feel better. The detectives noted that her speech and movements appeared unusually slow, as if she were having trouble processing events, although the detective noted that she understood her Miranda rights, followed the conversation without trouble, and gave coherent answers to his questions.

Morgan was arrested that day and has remained incarcerated since. On Dec. 29, 2015, a Chatham County grand jury indicted her on two counts of malice murder, two counts of felony murder, and two counts of aggravated assault.

The record showed, and family members testified, that Morgan had a protracted history of mental illness and hospitalization. She had been diagnosed by different doctors with bipolar disorder, schizoaffective disorder, major depressive disorder, personality disorder, and polysubstance abuse. However, bipolar disorder – which used to be called manic depression – was the one constant diagnosis. In her manic state episodes, her mother testified she rambled quite a bit and said such things as she was a millionaire and "was going to have lunch with the President." Once, Morgan was found naked in the dark in a friend's kitchen, washing dishes in cold water. Another time, she was hospitalized after "crawling like an inchworm" in a drugstore.

In her depressive episodes, she often sat on the bed for long periods, sometimes said she wanted to die, and at times quit bathing, brushing her teeth, or performing personal hygiene. Morgan's mental illness led to periods of hospitalization, which were often involuntary. The hospitals and other mental health facilities would keep Morgan for a time, until medication abated her symptoms, then release her. Her mental illness also affected her parental rights. Morgan has two older children – a son and a daughter – in addition to the babies she drowned. She has custody of neither due to her mental health problems.

At issue at Morgan's trial was her mental state at the time of the homicides – whether she could distinguish right from wrong at that moment of time. Following her arrest, she was interviewed by three psychiatrists. The first concluded Morgan suffered from "Bipolar I disorder, severe" and was in the midst of a depressive episode at the time of her actions. He noted her slow movements and the fact it had been at least three weeks since she'd last taken the medication for her disorder. He found her behavior appeared to be of the "altruistic" variety, i.e. she killed her children to spare them future pain. The second psychiatrist likewise concluded that Morgan suffered from Bipolar I, severe, and was severely depressed at the time of her children's deaths. Morgan told him about problems that enraged her, including that the father of her babies with whom they were living had brought other women to the house. But Morgan also consistently stated that she had killed her children to end their suffering. Thirteen months after her arrest, Morgan was interviewed by a third psychiatrist, the court's examiner, Dr. Denis Zavodny, a state employee of the Department of Behavioral Health and Developmental Disabilities. He diagnosed Morgan as suffering from a more moderate form of Bipolar I and found her to be in relatively

stable condition when he interviewed her. He found that although Morgan's symptoms were genuine, it appeared she was exaggerating them, especially "disturbance in her mood." He testified that she was very angry with the father of her babies and concluded she had normal criminal motives for the killing.

Following her trial in October 2017, the jury concluded that Morgan was criminally responsible for killing her children and found her "guilty but mentally ill" on all charges, rejecting her special plea of "not guilty by reason of insanity." She was sentenced to two consecutive life prison sentences and now appeals to the Georgia Supreme Court.

ARGUMENTS: Morgan's attorneys argue the Chatham County Superior Court abused its discretion by ruling that under Georgia Code § 24-7-704, expert opinion that Morgan's Bipolar I disorder had deprived her of the ability to distinguish right from wrong at a time other than that of the drownings of her children. Subsection (b) of the statute bars an "expert witness testifying with respect to the mental state or condition of an accused in a criminal proceeding [from] stat[ing] an opinion or inference as to whether the accused did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone." (The trier of fact is the judge or jury.) The statute "prohibits only expert opinions about a defendant's mental state at the time of the alleged offenses," the attorneys argue in briefs. But it does not prohibit expert opinions about the defendant's mental state at other times. Here the trial court erroneously excluded under the statute an expert opinion about Morgan's mental state at a time other than that of the alleged offenses. An expert should have been able to answer whether at other times Morgan's mental condition could deprive her of the ability to appreciate the nature and quality of her acts. "It was still for the jury to determine whether Morgan was legally insane at the time of the alleged acts," the attorneys argue. The superior court's wrongful exclusion of the expert testimony prejudiced, i.e. harmed, Morgan's insanity defense, and the court's error likely contributed to the verdict. Morgan's attorneys argue the trial court also abused its discretion by admitting officer bodycam videos showing the dead babies and futile attempt to save them. "Because the bodycam videos' probative value was at best minimal and their tendency to unfairly prejudice the jury was substantial, the superior court should have excluded them from Morgan's trial," the attorneys argue. "Needlessly gruesome evidence is prejudicial." Finally, the trial court erred in instructing the jury in an insanity trial that it could not consider what the punishment would be for the different verdicts – commitment to a mental health facility for an undetermined time for a verdict of "not guilty by reason of insanity" and a sentence of life in prison for "guilty but mentally ill." "The General Assembly has directed courts to instruct on, and juries to consider, the consequences of potential verdicts in insanity trials," Morgan's attorneys contend.

The State, represented by the District Attorney's and Attorney General's offices, argues that the trial court properly excluded expert opinion evidence regarding Morgan's ability to distinguish right from wrong under Georgia Code § 24-7-704. Morgan's attorneys argue the trial court erred in preventing one of the psychiatrists from testifying that a Dr. Doss had released her from Memorial Hospital's Clark Center after a 34-day inpatient stay in 2013 because she "appears competent and knows right from wrong." "As the State argued at trial, this type of evidence is prohibited in order to let the jury make the decision based on the evidence and not based on the conclusion of an expert witness," the State argues in briefs. "Dr. Doss's conclusions as to Appellant's [i.e. Morgan's] ability to know right from wrong in the legal sense, formed two

years prior to the murders, went beyond his diagnoses and treatments of Appellant into exactly the prohibited legal conclusions Rule 704 envisions." Morgan's attorneys argue that the question to the jury was so close that the opinion of the forensic psychiatrist would have tipped the scales in her favor and changed the verdict. "There are crimes that are so heinous, so inexplicable, that we as a society often cannot process them, cannot answer the question of 'why,'" the State argues. "But the answer to the 'why' is not always 'mental illness.'" Evidence was presented that some of Morgan's "irrational behavior actually had a very rational purpose: that sometimes, ceasing to bathe and brush her teeth was not due strictly to depression but was in the hopes of preventing her boyfriend from wanting to be intimate with her," the State contends. "She also sometimes did not clean the house not because of depression, but because she refused to clean up after her boyfriend and his 'female guests.'" Here, the expert opinion evidence "could do nothing but mislead the jury," the State argues. "Such evidence could have only caused the jury to believe they had to conclude that she necessarily did not know right from wrong when she murdered her children." The trial court also properly admitted the officers' body camera footage. "Emotional evidence is not per se unfairly prejudicial," the State contends. Here, the video "was of high probative value for the jury to be able to observe for themselves Appellant's behavior during her first interaction with law enforcement that day." Finally, the trial court properly instructed the jury not to consider what Morgan's punishment would be in a case involving an insanity defense. "The jury has a primary function: to determine criminal responsibility," and jurors should not focus prematurely on the consequences of their verdict. "Their verdict was not to be 'civil commitment' or 'incarceration with mental health treatment,'" the State argues. "Their verdict was 'not guilty by reason of insanity' or 'guilty but mentally ill.'"
Attorneys for Appellant (Morgan): Brandon Bullard, Jackie Tyo
Attorneys for Appellee (State): Margaret Heap, District Attorney, Emily Puhala, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Mark Lindemann, Asst. A.G.

JONES V. THE STATE (S19A1248)

A young man who was convicted in **Catoosa County** of sexual battery for touching the breasts, buttocks, and groin of a 15-year-old girl is appealing his conviction, arguing that Georgia's sexual battery statute is unconstitutional.

FACTS: On Aug. 12, 2013, **Jacob Daniel Jones**, then 18 years old, visited the home of J.S., who was less than 2 months shy of her 16th birthday. J.S. was sitting in her living room with three of her young friends when Jones came to the door. According to briefs filed by the State, J.S. "had no reason to believe that Aug. 12, 2013 would need to be a day she remembered. However, when Mr. Jones showed up, he was going to make it a day for J.S. that would live in infamy." In a written statement, J.S. said that when she answered the door, Jones, who had not been invited, grabbed her arm and pulled her outside. She said he immediately spun her around and pressed his body against hers. He then grabbed her chest, squeezed her buttocks, and put his hand between her legs. Later at trial, however, J.S. said that when Jones came to the door and asked to speak to J.S., she stepped outside, and the two sat on the porch talking "about friends and such." When Jones suggested the two have a few minutes alone together, J.S. grew uncomfortable and invited the others to come outside so they could all play basketball. According to the State, "J.S. understood what Mr. Jones wanted from her, but she was clear

when it came to Mr. Jones's advance that they did 'not need to do that.'" J.S. and Jones, along with her three friends, then went to the end of the yard to play basketball. While walking to the court, Jones was holding his cell phone. Because J.S. did not want Jones taking photos of her, she took Jones's phone from him and put it down her bra, according to one of her friends, who testified at trial. The friend said that when Jones asked J.S. to give it back, J.S. said, "If you want it, you'll have to come and get it yourself." "And he did," the witness added. Another friend, however, testified that J.S. had put her iPod down her shirt, not Jones's phone, and the witness said he had no recollection of her tempting Jones to "come and get it." He said he did see Jones touch J.S. in "the uppertory part of her body," touching J.S. "in a wrong way." "While it is true that J.S. was making sexually explicit jokes, did take Mr. Jones's phone, and did hug Mr. Jones, these actions did not provide Mr. Jones permission to unleash his concupiscent desires," the State has written in the Facts section of its brief. "J.S., a 'very huggable person,' gave Mr. Jones a hug and in response Mr. Jones moved his hands from a consensual hug to her 'crotch area' over her clothing, to her 'behind' and then put his hands on her 'chest, boob area,' all the while stating, 'if I wanted to, I could get you there too.'" J.S. eventually told her father what had happened.

In November 2013, a Catoosa County grand jury indicted Jones for three counts of Sexual Battery Against a Child Under 16, charging him with making intentional physical contact with the intimate parts of J.S., a child under the age of 16, without her consent. Jones's attorney filed a Motion to Quash Indictment as Unconstitutional and Disproportional. Following a hearing, the trial court denied his motion. Jones sought to appeal the trial court's denial of his motion to the Georgia Supreme Court, but in April 2014, this Court denied his application for a pre-trial appeal. Following a bench trial before Superior Court Judge Ralph Van Pelt, with no jury, the judge returned a verdict of guilty on all three counts. Jones was sentenced to five years and is currently in prison. Jones now appeals to the state Supreme Court.

ARGUMENTS: Jones's attorneys argue his convictions and sentence should be reversed because the state's sexual battery statute violates his constitutional rights to due process, equal protection, and freedom from cruel and unusual punishment. "Because Mr. Jones faces five years' imprisonment and lifetime registration as a sexual offender for touching J.S., yet would only be subject to misdemeanor punishment for having full-fledged sexual intercourse with her, the application of the sexual battery statute in this case violates Mr. Jones's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution as well as Article I, Section I, Paragraphs I, II, and XVII of the Georgia Constitution of 1983," Jones's attorneys argue in briefs. Georgia Code § 16-6-22.1 (b) states that, "A person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person." Generally, the punishment for sexual battery is as a misdemeanor. However, if the victim is under the age of 16, the defendant is subject to a prison sentence of one to five years. The statute does not contain a "Romeo and Juliet" provision, reducing punishment based on the relative ages of the victim and offender. A person convicted of felony sexual battery also faces lifetime registration as a sexual offender. In contrast, the statutes governing child molestation and statutory rape contain "Romeo and Juliet" provisions. Both crimes are punishable as misdemeanors where the "victim is at least 14 but less than 16 years of age and the person convicted is 18 years of age or younger and is no more than four years older than the victim." Furthermore, if convicted of child molestation or statutory rape, the defendant is not required to

register as a sex offender. “Based on their ages, Mr. Jones easily could have been charged with misdemeanor child molestation for his alleged conduct,” his attorneys argue. “Instead, Mr. Jones faces five years’ imprisonment and lifetime registration as a sexual offender,” in violation of his constitutional rights. “As applied in this case, the penalty attached to sexual battery is grossly disproportional to the crime.” Furthermore, Jones’s convictions should be reversed because the evidence was insufficient to support the verdict beyond a reasonable doubt, the attorneys contend. At trial, during cross-examination, J.S. conceded that she was afraid her boyfriend would learn about her flirtation with Jones. “In this case, J.S. was untruthful with law enforcement because she feared her jealous and abusive boyfriend would learn that she flirted with Mr. Jones. On direct examination, the State's own witnesses testified to observing only one instance of touching: J.S. placed a cell phone in her bra and invited Mr. Jones to retrieve it. Mr. Jones retrieved the cell phone, but made no additional physical contact. In that scenario, any touching of J.S. would be deemed incidental to retrieving the phone and consensual. On direct examination, the State's witnesses admitted that J.S. ‘had asked all of us to lie.’”

The State, represented by the District Attorney’s office, argues that, “The Legislature is presumed to enact legislation with full knowledge of the existing condition of the law, including that of the United States Constitution and Georgia Constitution.” Georgia’s sexual battery statute is narrowly tailored to prohibit the touching of any person without his/her consent, and includes an enhanced punishment when the victim is under the age of 16. “As applied in this case, the legislature protected this victim from exactly the conduct it intended to protect children under the age of 16 from,” the State argues in briefs. “The child, J.S., and Mr. Jones were flirting. The child did consent to the non-sexual contact of a hug, but did not consent to the groping of her breasts, buttock, or vagina.” Furthermore, the enhancement of the punishment under the sexual battery statute when a victim is under the age of 16, while there is a downward deviation for offenders of child molestation who are of similar age to their victims, “speaks to society’s views on protecting minors that are neither factually consenting to the activity and are not of legal age to consent.” Jones’s crime “was not a passive felony,” the State argues. “Competent evidence showed that Mr. Jones did touch the intimate parts of J.S., a child under the age of 16, without her permission.” His convictions should stand because the evidence was sufficient to support the verdict beyond a reasonable doubt. “J.S. is flirtatious, but that is not a sufficient reason for Mr. Jones to inappropriately touch J.S. without her consent,” the State argues. Furthermore, “Mr. Jones affirmed to the trial court at sentencing that his actions were in fact wrong and that he did need to be punished, thus affirming the evidence adduced at trial was sufficient to support the verdict beyond a reasonable doubt.”

Attorneys for Appellant (Jones): Sean Lowe, David Dunn
Attorneys for Appellee (State): Herbert “Buzz” Franklin, District Attorney, Melissa Pittman, Asst. D.A.

CITY OF ATLANTA ET AL. V. ATLANTA INDEPENDENT SCHOOL SYSTEM

At issue in this appeal is who controls school property that the City of Atlanta has annexed from unincorporated **Fulton County**: the **City of Atlanta** or the **Atlanta Independent School System**?

FACTS: As background to this case, in 1950, the Georgia General Assembly passed a local constitutional amendment (LCA) to the Georgia Constitution governing education-related aspects of annexation by Atlanta within Fulton County. The local amendment said: (1) that "when the corporate limits of the City of Atlanta are extended into Fulton County, the territory embraced therein shall become a part of the independent school system of the City of Atlanta and shall cease to be a part of the school system of the county;" and (2) that any "school property" within this annexed territory "shall become the property of the City of Atlanta." In 1950, Atlanta's municipal government owned and operated the Atlanta public schools. That changed in 1973, when the General Assembly separated APS from Atlanta's municipal government by enacting separate charters for the two entities and removing essentially all educational responsibilities from the municipal government. Under its 1973 charter, APS "shall have the exclusive supervision of the government of the schools free and independent of any existing or future ordinances of the Council of the City…."

Ten years later, the 1983 Constitution specifically forbade any further local amendments. Those pre-dating the 1983 Constitution, however, could be continued by the General Assembly through local legislation. Any that were not continued by local legislation prior to July 1, 1987, however, would be automatically "repealed and . . . deleted" as per the Georgia Constitution. In 1986, the General Assembly passed House Bill 1620, which remains the crux of this case. The legislation stated that the 1950 local constitutional amendment "shall not be repealed or deleted on July 1, 1987, as part of the Constitution of the State of Georgia but is specifically continued in force and effect on and after that date as part of the Constitution of the State of Georgia." House Bill 1620 described the 1950 schools amendment as a "constitutional amendment providing that, upon the extension of the corporate limits of the City of Atlanta into Fulton County, the additional territory and school property located in annexed area become[s] a part of the City of Atlanta independent school system."

In December 2017, the City adopted an ordinance the Atlanta school system argues is in direct violation of the 1950 local constitutional amendment. The ordinance annexes property that lies within the Fulton Industrial District, which is the last remaining unincorporated portion of Fulton County. Section 2 of the ordinance states that "the annexation of the Property shall not act to expand the boundaries of APS for this annexation. Rather, it is the expressed intent of the City Council that the Property shall remain within the boundaries of the Fulton County School District for this annexation." The Atlanta Public Schools subsequently sued the City. The City filed a motion to dismiss the lawsuit. Following a hearing, the trial court denied the City's motion in December 2018. The City now appeals to the Georgia Supreme Court.

ARGUMENTS: Attorneys for the City of Atlanta argue that the 1950 local constitutional amendment "is no longer valid." "The LCA provides that any 'school property' in annexed territory 'shall become the property of *the City of Atlanta*,'" the attorneys argue in briefs. "In contrast, the title, text, and public notice of House Bill 1620 say any annexed 'school property' would 'become a part of the City of *Atlanta Independent School System*.'" The drafters of House Bill 1620 "simply got it wrong – the LCA sends annexed school property to the City of Atlanta,

not to the now-fully independent school system," the attorneys argue. "The trial court ignored the plain text of both the constitutional amendment and continuing legislation, and selectively and inaccurately cited historical tidbits to support its forced reading that what the legislators meant in 1950 and 1986 was close enough to forgive the undeniable textual inaccuracy. The trial court thus erred in holding that House Bill 1620 validly continued the LCA." Decades of precedent reject text and titles that fail to "distinctly describe legislation," the attorneys argue. House Bill 1620's title was unconstitutionally inaccurate, as were its text and public notice. "The trial court erred in applying rules of statutory construction to contradict the plain language of the acts at issue in this case," the attorneys contend. They also argue that "Atlanta possesses delegated legislative power to determine whether annexations extend school boundaries," and the "trial court erred in holding that Atlanta lacked authority to make school system boundary determinations." And the trial court incorrectly accepted the Atlanta school system's hypothetical future possible injury as the basis for standing to sue the City in court. "Only actual or imminent injuries create standing," the City's attorneys argue. "Hypothetical concerns do not." Finally, the trial court erred in ruling that the doctrine of sovereign immunity does not apply to bar claims by the Atlanta school system against the City.

Attorneys for the Atlanta school system argue that the doctrine of sovereign immunity poses no bar to the Atlanta school system's lawsuit against the City. The Georgia Supreme Court's recent decision in *City of College Park v. Clayton County, S19A0460* "all but resolves the sovereign immunity issue here," the attorneys argue. In that decision, the Court held that, "There is no sovereignty to be maintained" when there are only two political subdivisions, neither of which has governing authority over the other party. Under those circumstances, sovereign immunity does not apply "at all." And just as Clayton County is not a sovereign over the City of College Park, and the City is not a sovereign over the County, "the same is true for APS and the City of Atlanta," the attorneys argue. The Atlanta public school system has standing, i.e. the right, to challenge the City's 2017 annexation ordinance. It has an injury because the annexation ordinance has a direct, adverse impact on APS' legal rights, the attorneys contend. They also argue that the 1950 local constitutional amendment remains valid and enforceable. "The fatal flaw in the City's argument is that HB 1620 does not say that annexed school property becomes the *'property of'* the Atlanta Independent School System," the attorneys argue. "Instead, it correctly summarizes the 1950 local constitutional amendment as providing that 'territory and school property located in the annexed area become *a part of* the City of Atlanta independent school system.'" Being a "part of" the Atlanta school system does not imply that APS acquires *legal title* to the annexed property. "Instead, the territory becomes 'a part of' APS in the sense that APS has control over, and the legal responsibility to provide, public education to school-aged children residing within those territorial boundaries. As for annexed school property, the 1950 amendment provides that it becomes the 'property' of the City." Finally, the trial court correctly ruled that the annexation statutes do not authorize the City's attempt to restrict the school system's boundaries. "The APS Charter confirms that the City may not annex territory without extending APS boundaries," the attorneys argue.

Attorneys for Appellant (City): Emmet Bondurant, David Brackett, Robert Ashe III, Susan Garrett

Attorneys for Appellee (APS): Richard Sinkfield, Michael Eber, Cameron Roberts, Rachel Bishop