



Supreme Court of Georgia
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SUMMARIES OF OPINIONS

Published Monday, October 5, 2020

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GLENN V. THE STATE (S19G1236)

The Supreme Court of Georgia has ruled in favor of a man whose probation was revoked for kicking a police car door off its hinges while officers were unlawfully arresting him.

With today's opinion, the high court has reversed a Georgia Court of Appeals decision that upheld an **Athens-Clarke County** court ruling. The Athens-Clark County court concluded that although **Christopher Glenn's** arrest for loitering and prowling was illegal because officers lacked probable cause, Glenn committed the new felony offense of Interference with

Government Property by damaging the police car door. The trial court therefore revoked his probation.

In today's opinion, however, "we hold that the common-law right to resist an unlawful arrest includes the right to use proportionate force against government property to escape an unlawful detention following the arrest," **Justice John J. Ellington** writes for a unanimous court. The high court therefore has reversed the Court of Appeals decision and remanded the case to the trial court to determine whether the force Glenn used to resist the officers' actions was proportionate under the circumstances.

Glenn was on probation when on May 3, 2018, an officer of the Athens-Clarke County Police Department responded to a "suspicious person" call in the area of Oglethorpe Elementary School. The officer saw Glenn walking on the inside of a line of trees and shrubbery that bordered the road behind the school around the time students were being released for the day. The officer called for backup while ordering Glenn to stop walking. Glenn asked why he was being detained, told the officer his name, and said he was just walking home. Another officer soon arrived, and they handcuffed Glenn. Three more officers arrived, and the officers searched Glenn and put him into a patrol car.

After a few minutes, Glenn complained of being dehydrated, and emergency medical services were called to the scene to check on him. When EMS arrived, Glenn was placed in the ambulance for treatment. However, the supervising officer soon ordered he be removed from the ambulance because he was in custody and could be assessed at the jail. Instead of getting out of the ambulance, Glenn grabbed onto a seatbelt and would not let go. Officers dragged him to the rear of the ambulance where Glenn flung himself at the officers, hitting the supervising officer's head with his head. Glenn and the officers continued to struggle as they forced Glenn back into the patrol car, with Glenn eventually kicking against the passenger side door hard enough to damage the hinges and propel himself out of the car. As Glenn stood next to the patrol car, the supervising officer knocked him to the ground, and officers finally secured Glenn in the patrol car and took him to jail.

The day after the incident, an arrest warrant was issued against Glenn, alleging he had violated his probation by committing the new offenses of loitering and prowling, obstruction of a law enforcement officer, and interference with government property. The State filed a petition to revoke his probation.

At the probation revocation hearing, the judge ruled the officers had lacked probable cause to arrest Glenn for loitering and prowling. The judge found no violation of probation for that offense and, because the arrest for loitering and prowling was unlawful, no violation of probation for obstruction of a law enforcement officer. However, the judge did rule that Glenn violated his probation based on the new offense of interference with government property, and he revoked 90 days of his probation to be served in the county jail. Glenn then appealed to the Court of Appeals, the state's intermediate appellate court, arguing the trial court erred by finding he committed the new offense of interference with government property because he was resisting an unlawful arrest and was justified in using force and damaging property. But the appellate court upheld the trial court's ruling. Glenn then sought review by the state Supreme Court, which agreed to review his case to answer two questions: May a defendant damage government property in an attempt to resist an unlawful arrest? And if so, did the Court of Appeals err in affirming the revocation of Glenn's probation?

“The Georgia General Assembly adopted the common law of England as of May 14, 1776, as Georgia’s own law, except to the extent that Georgia’s statutory or constitutional law displaced the common law, and that adoption remains in force today,” today’s 46-page opinion says. Imbedded in the common law of England is the right “to physically resist an unlawful arrest or escape from unlawful detention.” “Generally, under the common law, a person cannot be punished for fleeing from or physically resisting an unlawful arrest or escaping from an unlawful detention, so long as the person uses no more force than is necessary to achieve such purpose.” The right to resist an unlawful arrest and detention “arises in the context of warrantless arrests,” the opinion notes.

“In the context of the common-law right to resist an unlawful arrest, we have found no controlling authority for distinguishing between conduct that may harm an officer and conduct that may damage government property,” the opinion says. “Notwithstanding the dearth of case law on point, because the common-law right to resist an unlawful arrest or detention is framed in terms of the proportionate use of force necessary to resist the force used to arrest or detain a person, we conclude that the right does not distinguish between the use of force against an arresting officer’s person and the use of force against objects, including government property.”

Furthermore, “we have found no authority in the Georgia Constitution that expressly restricts the right to use the proportionate force necessary to resist an unlawful arrest or escape from an unlawful detention,” the opinion says. “Nor have we found any statutory authority that places limitations on the common-law right to resist an unlawful arrest or escape from an unlawful detention.”

“Although many states have limited or eliminated the common-law right to resist an unlawful arrest or detention, after reviewing this State’s constitutional and statutory provisions relevant to detentions and arrests, we conclude that the Georgia General Assembly has not done so and that the common-law rule remains in effect in Georgia, at least with respect to charges of obstruction or interference with government property,” the opinion says. “And we conclude that the mere passage of time between an unlawful arrest and an attempt to escape from the ensuing detention has no bearing on whether the use of force was proportionate or necessary. Under Georgia law, therefore, a person may damage government property in an attempt to resist an unlawful, warrantless arrest or escape an unlawful warrantless detention, using no more than proportionate force, even where, as in this case, officers handcuff an arrestee and place him in a patrol car before the arrestee’s property-damaging conduct.”

“Under the common-law rule, Glenn’s right to resist an unlawful detention did not evaporate simply because he kicked the door ‘some time’ after he was initially handcuffed and seated in a patrol car but before he was brought before a judicial officer or an arrest warrant was issued,” the opinion says. “Thus, the trial court cut short its analysis when it failed to consider whether Glenn used force to resist the officers’ actions that was proportionate under the circumstances.” Therefore, “the judgment of the Court of Appeals is reversed, and the Court of Appeals is directed on remand to vacate the order revoking Glenn’s probation and to remand this case to the trial court for further proceedings consistent with this opinion.”

Attorney for Appellant (Glenn): Benjamin Pearlman, Public Defender

Attorney for Appellee (State): Brian Vance Patterson, Acting District Attorney

PREMIER HEALTH CARE INVESTMENTS, LLC DOING BUSINESS AS FLINT RIVER HOSPITAL V. UHS OF ANCHOR, L.P. DOING BUSINESS AS SOUTHERN CRESCENT BEHAVIORAL HEALTH SYSTEM (S19G1491)

The Georgia Supreme Court has ruled in favor of a hospital in Montezuma, GA and reversed a Georgia Court of Appeals ruling that it was required to obtain a “certificate of need” before it reconfigured beds for its psychiatric/substance abuse patients.

In 2005, the Georgia Department of Community Health created a rule, commonly known as the “Psychiatric Rule,” that requires hospitals to obtain a certificate of need (CON) “prior to the establishment of a new or the expansion of an existing acute care adult psychiatric and/or substance abuse inpatient program.” The rule defines “expansion” as “the addition of beds to an existing CON-authorized or grandfathered psychiatric and/or substance abuse inpatient program.”

In 2010, **Premier Health Care Investments, LLC** obtained a certificate of need to establish a new 12-bed adult (geriatric) psychiatric/substance abuse program at its **Flint River Hospital**, an acute care hospital licensed for 49 beds. Since then, Flint River has been using up to 30 of its beds for psychiatric/substance abuse patients, although it has never exceeded its total licensed capacity of 49 beds. In 2016, Lake Bridge Behavior Health System, a competitor and sister facility of **UHS of Anchor, L.P., doing business as Southern Crescent Behavioral Health System** – wrote to the Georgia Department of Community Health, alleging that Flint River was violating its certificate of need by having more than 12 psychiatric/substance abuse beds. The department investigated and sent a letter to Flint River ordering it to cease-and-desist from offering services beyond the 12 beds the certificate of need authorized. However, after Flint River appealed, the Commissioner of the Department of Community Health issued a final decision in which the Commissioner reversed the hearing officer’s decision. The Commissioner reasoned that Flint River had prior authority through the certificate of need to offer psychiatric/substance-abuse beds; that the reconfiguration of other beds for that authorized use did not exceed Flint River’s total licensed bed capacity; and that the reconfiguration did not otherwise trigger the need for a new certificate of need. Southern Crescent subsequently appealed to the Fulton County Superior Court, arguing that under Georgia statutory law and the Psychiatric Rule, Flint River was required to obtain a new CON before redistributing psychiatric/substance-abuse beds. But that court upheld the Commissioner’s decision. Southern Crescent then appealed to the Court of Appeals, the state’s intermediate appellate court, which reversed the trial court’s decision, ruling that Flint River was required to obtain a new certificate of need because it had redistributed beds for psychiatric/substance abuse patients beyond the number authorized in its certificate of need for that program. The appellate court said that the Psychiatric Rule “explicitly requires that a CON be obtained ‘prior to...the expansion of an existing acute care adult psychiatric and/or substance abuse inpatient program,’” and that “‘expansion’ is defined within that Rule to mean ‘the addition of beds to an existing CON-authorized or grandfathered psychiatric and/or substance abuse inpatient program.’” Flint River appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in deciding that the Department of Community Health was authorized to promulgate a rule to create a category of “institutional health services” requiring a certificate of need that is not listed in Georgia Code § 31-6-40 (a).

In today’s opinion, written by **Justice Sarah H. Warren**, “we answer that question ‘yes,’ and therefore reverse the decision of the Court of Appeals.”

“In determining whether the Department was authorized to promulgate a rule to create a category of ‘new institutional service’ requiring a CON, we first look to the relevant legal texts,” the opinion says. “Those include a comprehensive statutory scheme defining and establishing the CON program, as well as regulations the Department has promulgated with respect to CONs.”

At issue here is whether Flint River’s reallocation of psychiatric inpatient beds within the total number of inpatient beds it is authorized to operate requires its own CON. Southern Crescent “fervently contends that it does, arguing that ‘before a psychiatric healthcare facility can exceed its number of CON-authorized beds, it needs a new CON,’” the opinion says. But that argument ignores that Georgia Code § 31-6-40 (a) “governs which services constitute a new institutional health service that requires a CON,” and “the reallocation of beds is not one of them,” the opinion says. “In other words, § 31-6-41 (a) – a statute through which the General Assembly has generally ensured that Department-approved CONs are limited in scope – does not alter the text of § 31-6-40 (a), a statute through which the General Assembly has specified an exhaustive list of new institutional health services for which a CON is required.”

“Thus, to the extent the Psychiatric Rule purports to require a separate CON for bed redistribution within an existing CON-approved psychiatric/substance-abuse program without exceeding the total number of approved inpatient beds for the facility, the Rule is invalid because it purports to create a new category of new institutional health service that is not enumerated in § 31-6-40 (a),” the 55-page opinion concludes. “We therefore reverse the Court of Appeals’s opinion holding otherwise.”

Attorneys for Appellant (Flint River): Christopher Anulewicz, Austin Alexander
Attorneys for Appellee (Southern Crescent): Robert Threlkeld, Ryan Burke

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

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| * Horace E. Coates (Newton Co.) | <u>COATES V. THE STATE (S20A1128)</u> |
| * Quentin Horton (Candler Co.) | <u>HORTON V. THE STATE (S20A0799)</u> |
| * Layton K. Lester (Tift Co.) | <u>LESTER V. THE STATE (S20A0827)</u> |
| * Dakota Swann (Fulton Co.) | <u>SWANN V. THE STATE (S20A0767)</u> |

IN LAWYER DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

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| * Daniel Lee Dean | <u>IN THE MATTER OF: DANIEL LEE DEAN (S20Y1435)</u> |
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The Court has accepted a petition for voluntary discipline and ordered the **suspension with conditions for reinstatement** of attorney:

* David Godley Rigdon

IN THE MATTER OF: DAVID GODLEY RIGDON
(S21Y0002)