



Supreme Court of Georgia

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



CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

Please note: *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

Wednesday, October 10, 2018

10:00 A.M. Session

PARK V. THE STATE (S18A1211)

A man deemed a “sexually dangerous predator” is appealing criminal charges filed against him for his alleged destruction of the electronic monitor used by the sheriff to keep tabs on him. **Joseph Park** challenges as unconstitutional the Georgia statute requiring the use of electronic monitors for anyone the Sex Offender Registration Review Board has classified as the most dangerous level of sex offenders with the highest risk of reoffending.

FACTS: As background, Georgia, like other states, has enacted laws to protect the public and especially minors from predatory sexual behavior. In 1996, the Georgia General Assembly created the Georgia Sexual Offender Registry. In 2006, it passed statutes to address the problem of recidivism among sex offenders. One statute – Georgia Code § 42-1-14 – sets up a risk classification system on the ground that “recidivist sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety.” The statute establishes a three-tiered review of a sexual offender’s classification with Level III being the most severe and reserved for “sexually dangerous predators,” based on data including criminal histories, sexual history polygraph information, and psychological evaluations. Under the law, an offender classified as a sexually dangerous predator is subject to certain requirements beyond those for sexual offenders

generally. First, the offender must “wear an electronic monitoring system...for the remainder of his or her natural life.” He must report to the sheriff of his county twice a year, versus once a year for other sex offenders. And he is subject to certain employment restrictions.

In 2003, three years before passage of § 42-1-14, Park was convicted in Douglas County of child molestation and nine counts of sexual exploitation of a minor. He was sentenced to 12 years in prison, with a requirement to serve eight. Shortly before he was released from prison in 2011, the Sex Offender Registration Review Board classified Park as a “sexually dangerous predator.” Park petitioned for judicial review of his classification in Fulton County Superior Court, challenging the classification on constitutional grounds. The trial court denied his challenges and the state Supreme Court denied Park’s application to appeal to Georgia’s highest court.

As a sexually dangerous predator, Park was required to wear an electronic monitoring device, i.e. an ankle monitor. In February 2016, the DeKalb County Sheriff’s Office received two separate “master-tamper alerts” from Park’s monitoring device. The second time, the sheriff’s office received information that the device’s “bridge clips” were broken. Park was arrested for tampering with an ankle monitor in violation of Georgia Code § 16-7-29 (b) (5), a criminal offense carrying a punishment of a one-to-five year prison sentence.

Following Park’s indictment in **DeKalb County** Superior Court for tampering with an ankle monitor, Park’s attorney filed a “general demurrer” challenging the constitutionality of § 42-1-14. The trial court denied Park’s motion, finding he did not prove that § 42-1-14 was “punitive in effect,” and therefore he could not negate the General Assembly’s assertion in the statute’s preamble that “the designation of a person as a sexual predator is neither a sentence nor a punishment but simply a regulatory mechanism and status resulting from findings by the Sexual Offender Registration Review Board and a court if requested by a sexual offender.” Parks now appeals to the state Supreme Court.

ARGUMENTS: Park’s attorneys urge the state Supreme Court to reverse the trial court’s denial of Park’s motion and declare § 42-1-14 unconstitutional on a number of grounds. First they violate the Constitution’s prohibition of “ex post facto” laws, which in criminal law retroactively alter the definition of a crime or increase the punishment for a criminal act. This statute is “punitive in effect,” and the trial court inaccurately concluded that § 42-1-14 is a “civil regulatory mechanism” that does not violate either the U.S. or state constitutions. “GPS monitoring constitutes a serious deprivation of liberty,” the attorneys argue in briefs. The statute “promotes the traditional aims of punishment – retribution and deterrence.” The attorneys also argue that the record lacks evidence that recidivism is a problem among those classified as sexually dangerous predators. Among the constitutional rights § 42-1-14 violates are the protection against double jeopardy (or the right against being prosecuted more than once for the same crime); the right to due process; the right against “unreasonable searches and seizures” (§ 42-1-14 allows “an unreasonable, lifetime warrantless search,” the attorneys contend); the right to privacy, which means “protection for the individual from unnecessary public scrutiny” and the right “to be free from the publicizing of one’s private affairs with which the public has no legitimate concern;” the right against self-incrimination; and the right to equal protection of the laws, which the statute violates by “treating him differently than other convicted felons,” Park’s attorneys argue.

The State, represented by the Attorney General's and Solicitor General's offices, argues that the state Supreme Court should uphold the trial court's order denying Park's motion. First, "res judicata" bars more than half of Park's 10 or so constitutional challenges. ("Res judicata" is Latin for a legal doctrine that prevents the continued litigation of a matter in which there already has been a final court judgment. Here, Park already challenged the constitutionality of § 42-1-14 when he petitioned for judicial review of the Board's decision to classify him as a sexually dangerous predator. Second, each of Park's constitutional challenges that rely on rights applying only in criminal cases (such as ex post facto, double jeopardy, and self-incrimination) fails because Georgia's sexual offender classification statute is a civil regulatory statute. Under the U.S. Supreme Court's 2003 decision in *Smith v. Doe*, whether the statute is civil or punitive turns on the legislature's expressed intent, and here, the Georgia General Assembly expressed an intent to enact a civil regulatory scheme, not a criminal one, the State argues. Third, Park's privacy-related challenges fail. "Although electronic monitoring is intrusive, the privacy expectations of individuals classified as sexually dangerous predators are significantly diminished as a consequence of their serious crimes, and the state interests furthered by the system – protecting children and the public at large from the terrible and long-lasting harms caused by predatory sexual activity – are compelling," the State argues. Finally, the remainder of Park's constitutional challenges lack merit, the State contends.

Attorneys for Appellant (Park): Mark Yurachek, Robert Citronberg

Attorneys for Appellee (State): Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Tina Piper, Sr. Asst. A.G., Rebecca Dobras, Asst. A.G., Andrew Pinson, Dep. Sol. Gen., Ross Bergethon, Dep. Sol. Gen.

TYNER V. MATTA-TRONCOSO ET AL. (S18G0364)

A landlord is appealing a Georgia Court of Appeals decision in this dog-attack case, arguing he cannot be held liable for the injuries of a woman who was two blocks away when his renters' pit bulls escaped a fenced-in yard and mauled her.

FACTS: Gregory B. Tyner owned a house on Ivy Trace in Stockbridge, **Henry County**. Initially, he lived in the home where he built a dog's door that led out to a large fenced-in back yard. In December 2008, he moved from the home and began renting the property to Michael and Lakeisha Thornton, who moved in with their three children. The Thorntons had a Labrador retriever, and the lease specifically allowed pets. A few months after the Thorntons moved in, a lawn-care service provider broke the latch to the front gate of the fence. Michael Thornton claims he notified Tyner several days after it happened, but Tyner never repaired it, and Thornton never followed up with subsequent requests that Tyner fix it. Instead, Thornton began securing the front gate by tightly tying a dog leash around the top posts of the gate and the abutting part of the fence and by placing weights and a cement block at the base of the gate to stop it from swinging open. Nevertheless, a few years after the Thorntons had been living in the leased home, their Labrador retriever escaped from the back yard and was fatally struck by a car. The Thorntons then adopted two pit bull puppies from his brother. Like their previous dog, they kept the puppies in the back yard during the day and crated in the basement at night. For the next two years, neither of the dogs ever displayed any aggressive behavior, and the Thorntons were comfortable letting their children and young nieces play with them.

The afternoon of Oct. 24, 2013, **Maria Matta-Troncoso**, who lived several blocks from the Thorntons, was walking her two small dogs in the neighborhood when the Thorntons' dogs, which had escaped from the yard, raced toward her and began attacking her dogs. One of her dogs fled, but in trying to shield her other dog, Matta-Troncoso picked it up at which time both pit bulls knocked her to the ground and began mauling her. A neighbor quickly called police who arrived within moments. An officer attempted to stop the attack by kicking the dogs. When they didn't stop, he fatally shot both dogs. He and another officer attempted to render first aid, but Matta-Troncoso's injuries were severe enough that she had to be life-flighted by helicopter to Atlanta Medical Center where she remained hospitalized for seven days. Matta-Troncoso suffered facial disfigurement and underwent several surgeries, claiming her medical bills came to more than \$140,000.

Initially, Matta-Troncoso and her husband sued only the Thorntons as the dogs' owners, asserting they were liable for Matta-Troncoso's injuries for failing to properly secure the dogs and allowing them to run at large in violation of city and county ordinances. They later amended their complaint with a separate claim against Tyner, who rented the leased premises to the Thorntons. The Matta-Troncosos alleged that Tyner breached his duty to keep the leased premises in good repair so that the gate latch worked, and that his negligence was the direct cause of Matta-Troncoso's injuries. The suit against the Thorntons remains pending. This appeal regards Tyner, who responded to the suit by filing a motion with the Henry County State Court, requesting "summary judgment" in his favor. (A judge grants summary judgment after deciding a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) Tyner argued that the plaintiffs, the Matta-Troncosos, failed to present any evidence showing that Tyner's failure to repair the gate latch was the "proximate" cause, or primary cause, of Matta-Troncoso's injuries. The trial court ruled in Tyner's favor, finding that while Tyner breached a duty to keep the premises in good repair, he deserved summary judgment because the Matta-Troncosos presented no facts showing that the dogs had ever displayed a propensity to being violent or that Tyner knew of such a propensity. On appeal, however, the Court of Appeals reversed the ruling, finding that proximate cause is a question for a jury to decide, and that under Georgia Code § 51-2-7, dogs that are roaming in violation of a local ordinance are considered vicious as a matter of law. The appellate court also rejected Tyner's argument that he could not be held liable under Georgia Code § 44-7-14 for injuries that occurred off the property. Tyner now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the appellate court erred in reversing the trial court's grant of summary judgment to Tyner.

ARGUMENTS: Tyner's attorneys argue the Court of Appeals erred in reversing the trial court's ruling. It is undisputed that Tyner did not own the dogs and that Matta-Troncoso was never on Tyner's property. Tyner claims that while he knew the Thorntons owned a Labrador retriever when they had moved into his rental house, he never knew they had subsequently replaced the dog with two pit bulls. Tyner was what is called an "out-of-possession" landlord, or one who does not occupy the leased property and does not exercise much day-to-day control over the property. The Matta-Troncosos' claim against Tyner "is a veiled attempt to hold an out-of-possession landlord liable for his tenants' failure to properly secure their dogs," Tyner's attorneys argue in briefs. "The trial court properly determined such a claim was not sustainable under Georgia law and granted summary judgment to Tyner." By reversing the trial court's

ruling, the Court of Appeals has “improperly expanded the scope of the dangerous-animal statute (Georgia Code § 51-2-7) to a non-owner or keeper and also created out-of-possession landlord statutory liability for injuries sustained by a third party who was neither at nor anywhere near the leased premises,” the attorneys argue. The Court of Appeals also erred in ruling that there is sufficient evidence to find that the broken latch gate, “which had not been used to secure the gate for many years,” was the proximate cause of the dogs’ escape on Oct. 24, 2013. “The record is clear that the broken gate latch is not the proximate cause of Matta-Troncoso’s dog bite injuries multiple blocks away from the leased premises, and Georgia law simply does not place the burden on an out-of-possession landlord to properly secure his tenants’ pets, particularly pets the out-of-possession landlord does not even know his tenants possess,” Tyner’s attorneys argue. “Because Matta-Troncoso was injured by the pit bulls, not the broken latch; because Tyner had no knowledge of the pit bulls’ existence; and because the Thorntons did not begin keeping the pit bulls on the leased premises until after Tyner relinquished possession and control of the premises to the Thorntons and the gate latch broke,... Tyner cannot be held liable for Matta-Troncoso’s injuries pursuant to Georgia Code § 44-7-14. That statute states that an out-of-possession landlord (like Tyner) is not responsible to third persons (like Matta-Troncoso) for damages resulting from the negligence of the premises by the tenant (like the Thorntons), “provided, however, the landlord is responsible for damages arising from...the failure to keep the premises in repair.” This statute, the attorneys argue “is customarily discussed in determining an out-of-possession landlord’s potential liability to third parties for injuries sustained *on* the leased premises. In stark contrast here, Appellees (i.e. the Matta-Troncosos) seek to hold Tyner liable for injuries Matta-Troncoso sustained approximately two blocks *away* from the leased premises.”

Attorneys for the Matta-Troncosos argue that the trial court erred by attaching extra conditions to their burden of proof under § 44-7-14 by ruling they were required to, “and had failed to, produce evidence that Tyner had knowledge that the Thorntons’ dogs had a history of prior aggression or prior escapes in order to show proximate cause. The Court of Appeals remedied this error by correctly finding that proximate cause is a jury question and noting that under § 51-2-7 dogs roaming in violation of a local ordinance are considered vicious as a matter of law.” Contrary to Tyner’s argument, the appellate court did not expand liability under § 51-2-7 to non-owners and keepers nor did that court create unlimited liability for landlords under § 44-7-14. While § 51-2-7 puts citizens on notice that dogs roaming loose are presumed dangerous under local ordinances, that knowledge is secondary to the landlord’s duty to repair and whether a plaintiff’s injuries arose from that failure, the attorneys argue. Because Matta-Troncoso’s injuries arose from Tyner’s breach of statutory duty, the Court of Appeals did not expand liability, “but applied existing precedent to remedy the trial court’s error and reach the correct result,” the Matta-Troncosos’ attorneys argue.

Attorneys for Appellant (Tyner): Michael Kendall, Kimberly Mowbray

Attorneys for Appellees (Matta-Troncoso): Bruce Millar, James Sullivan

WHITE V. THE STATE (S18G0365)

A man convicted of rape and child molestation involving three young girls is appealing his convictions in **Newton County**. He argues that under Georgia’s Rape Shield Law, the trial court was wrong to have admitted evidence that one of his young victims allegedly committed sexual battery herself against her father’s 4-year-old and 5-year-old stepdaughters.

FACTS: In November 2014, a Newton County jury convicted **Charles White** of three counts of rape, one count of statutory rape, 10 counts of child molestation, three counts of aggravated sodomy, three counts of incest, and one count of enticing a child for indecent purposes. According to the facts at trial, Royce and Monique Mitchell had a daughter, S.M. For a time, Monique's brother, Charles White, lived with the family until he had a child of his own and moved out to be with the child's mother. Periodically, however, he came back to stay with the Mitchells when he and his girlfriend argued. In 2012, White's 18-year-old niece, D.P., disclosed to her mother that White had molested her multiple times beginning when she was 7 years old and continuing until she was 14. Her mother then called Royce Mitchell out of concern for S.M. When he asked his daughter if her uncle had ever acted inappropriately toward her, she said no.

By 2013, Royce Mitchell was involved with another woman who had two daughters, 4 and 5. That year, the two little girls said that S.M. had molested them. When Mitchell asked his daughter if that were true, she admitted it was, then broke down and said "Uncle Charles" had molested her multiple times from the time she was in kindergarten until she entered the fourth grade. S.M. was interviewed by an expert in child sexual abuse who later testified that children who exhibit behavior that is "sexualized" or who are acting out sexually toward other children are exhibiting behavior consistent with a child who has been sexually abused. A third victim, White's daughter, also testified that she had been molested by her father in 2013 when she was 9. She testified that he touched her in her vaginal area, massaged his penis against her vagina and buttocks over clothing, and once had intercourse with her.

Prior to his trial, White's attorney filed a motion asking the court to exclude the evidence that S.M. had committed acts constituting sexual battery when she was 12 years old against her father's stepchildren, based on the Rape Shield Statute (Georgia Code § 24-4-412). The statute says that in prosecuting sexual offenses, "evidence relating to the past sexual behavior of the complaining witness shall not be admissible...except...evidence relating to the past sexual behavior of the complaining witness may be introduced if the court...finds that past sexual behavior directly involved the participation of the accused and...supports an inference that the accused could have reasonably believed that the complaining witness consented to the conduct complained of..." The trial court denied White's motion, ruling that the statute did not exclude the evidence because it was relevant to a number of issues that had nothing to do with S.M.'s consent, including that the jury could infer from S.M.'s abnormal behavior that she was likely the victim of sexual abuse, and most likely at White's hands. The trial court also denied White's motion for a new trial on the same grounds.

On appeal, the Georgia Court of Appeals – the state's intermediate appellate court – upheld the trial court's ruling. It pointed out that, "the Rape Shield Statute reflects a strong legislative effort to protect the victims of certain sexual offenses by excluding 'evidence which might reflect on the character of the witness without contributing materially to the issue of the guilt or innocence of the accused.'" "Georgia's Rape Shield Statute is a shield for the victim, not a sword for the accused," the appellate court wrote in its opinion. "Thus, it 'cannot be invoked by a defendant to prevent a victim from offering otherwise relevant evidence.'" White now appeals to the Georgia Supreme Court.

ARGUMENTS: White's attorneys argue that prosecutors "should not be entitled to decide how much of a victim's sexual history will be discussed at trial when a statute plainly forbids it." They ask that this Court reverse the decision and grant a new trial. "The State used

the sexual history of a 12-year-old to establish she had been molested,” White’s attorneys argued in briefs. “It informed the jury that she had molested two other children.” “By its plain text, Georgia’s Rape Shield statute disallows all parties from admitting evidence of a victim’s sexual history.” Evidence does not qualify as admissible under the statute simply because it goes to an issue other than consent. “The Rape Shield statute should spare victims from shame, humiliation, and embarrassment,” the attorneys argued. “It neither spares nor shields those victims if it doesn’t apply to prosecutors, because any trial can become a referendum on their sexual history as soon as the State opens the door. The Court of Appeals erred by inventing an exception for prosecutors based solely on the unwritten ‘intent’ of the law. This new rule discourages victims from coming forward by leaving them uncertain of whether their sexual histories will remain private. Because of that uncertainty, half a shield is worse than none at all.”

White’s “fake outrage concerning the victim’s ‘shame, humiliation, and embarrassment’ from the State’s introduction of this evidence is simply a thinly veiled argument against the admissibility of relevant evidence that was damning to Appellant (i.e. White) at trial,” the State argues in briefs. “A defendant cannot invoke Georgia’s Rape Shield statute in order to prohibit the State from introducing relevant evidence against him since the statute’s purpose and construction is designed to ‘shield’ alleged victims from character attacks by the accused.” Through the statute, “the legislature equipped the complaining victim with a ‘shield’ from attacks by her natural adversary in the legal process, the defendant. Appellant asks this Court to thwart the statute’s purpose in protecting the victim by transferring those protections to himself through the exclusion of probative evidence of his guilt.” For these reasons, the State asks this Court to affirm White’s convictions.”

Attorneys for Appellant (White): Andrew Fleischman, Noah Pines

Attorney for Appellee (State): Layla Zon

2:00 P.M. Session

FULTON COUNTY V. CITY OF ATLANTA (S18A1156)

The government of **Fulton County** is appealing a court ruling that was in favor of the **City of Atlanta** and that voided as invalid a 1979 amendment to the Georgia Constitution. The amendment had created the “Fulton County Industrial District,” which prohibited Atlanta or any other municipalities from annexing any part of it.

FACTS: In 1979, the Georgia General Assembly adopted a local constitutional amendment creating the Fulton County Industrial District, an area of industrial development in the west central portion of Fulton County, along the east side of the Chattahoochee River. The voters ratified the amendment in 1980. The 1979 amendment prohibited municipal encroachment, via annexation or incorporation, into the Fulton Industrial District. The amendment states that the district “shall not hereafter be included within the limits of any municipal corporation as now exists or hereafter incorporated except by constitutional amendment.” The amendment also states that the properties within the Fulton Industrial District “shall be subject to all taxes for school purposes.” However, the amendment prohibits the County from taxing for educational purposes any property that is also located within the boundaries of the Atlanta Independent School System, which is Atlanta’s public school system.

In 2015, the City of Atlanta sought to annex a parcel of land within the Fulton Industrial District, and filed a lawsuit against the County asking the court to declare the 1979 local constitutional amendment invalid. The trial court ruled in favor of the City and declared the amendment invalid. The County appealed, and the Georgia Supreme Court tossed out the trial court's ruling because the City had not yet consummated the annexation, and the high court said the ruling was therefore premature. In 2017, the City voted to annex the parcel of land located in the industrial district into the City. In response, Fulton County sued in Fulton County Superior Court, challenging the annexation based on the 1979 local constitutional amendment.

The 1983 Constitution replaced the 1976 Constitution, and it barred any future local constitutional amendments. Under the law, existing amendments would remain in place for four years after which, if the General Assembly had not specifically readopted a local constitutional amendment, it automatically would be repealed. In 1983, the General Assembly passed House Bill 85 that stated that the 1979 amendment would not be repealed. But in March 2018, the trial court ruled in favor of the City, declaring the 1979 local constitutional amendment void and also ruling that House Bill 85 which continued the 1979 amendment was void. Fulton County now appeals to the state Supreme Court.

ARGUMENTS: The County's attorneys argue that the trial court erred when it found that sovereign and official immunity barred any legal claims against the City. Municipalities derive their immunity from Georgia Code § 36-33-1, which states that "municipal corporations shall be immune from liability for *damages*." (Here, the County was not asking the court for damages but for a judicial declaration that the 1979 local constitutional amendment was valid.) On the other hand, the State of Georgia and its political subdivisions, including counties, derive their sovereign immunity from the Georgia Constitution, which states that, "officers and employees of the state or its departments and agencies shall not be subject to *suit or liability*." "The City's sovereign immunity shields it only from damages; on the other hand, the County's sovereign immunity shields it entirely from all suit or liability, including declaratory judgment and injunctive relief," the County's attorneys argue in briefs. The trial court also erred in declaring the 1979 local constitutional amendment void from its inception. "The law is overwhelmingly clear that, 'When a legislative act is constitutionally challenged, all presumptions are in favor of the constitutionality of an act of the legislature,'" the attorneys argue. Here, the trial court erroneously relied on "pure speculation" by the City's attorneys "that the General Assembly violated their oaths of office and conspired to combine two subject matters within the 1979 amendment in an effort to hide the true intent of the amendment." Contrary to the City's argument, the 1979 amendment does not violate the "single subject rule," which prohibits combining unrelated measures in a single amendment or referendum. The trial court also erred in declaring the legislation void that continued the local amendment. "The trial court erroneously held House Bill 85 invalid on the basis that House Bill 85's public notice was invalid as it specifically addressed only the creation of the Fulton Industrial District and not the taxation matters also enacted by the 1979 amendment." Finally, the trial court was wrong in concluding that the County does not face uncertainty as a result of the City's purported annexation, the County's attorneys argue. It is "clearly essential for the County to be able to know whether subject property is part of unincorporated Fulton County going forward," the County contends. "The people of Fulton County voted to create the Fulton Industrial District. That creation included a prohibition against the industrial district being incorporated into any

city. The City’s attempt to ignore the will of the people is a violation of the terms of the 1979 local constitutional amendment and should not be allowed.”

Attorneys for the City argue that the 1979 amendment came about “through impermissible political horse trading and was void the day it was passed.” The year after two separate amendments failed at the ballot box – one creating the Fulton Industrial District and the other repealing a prior amendment to the Constitution that allowed Fulton County to levy a tax for its schools within Atlanta – the General Assembly again revisited both topics, the City claims. “Rather than risk defeat again, the General Assembly combined the two previously separate amendments into a single local amendment and a single referendum,” the City’s attorneys argue in briefs. “Stung by defeat at the ballot box a few months before, the 1979 General Assembly violated the Single Subject Rule by combining two separate and unrelated proposals into a single resolution and referendum.” Sovereign immunity bars Fulton County’s claims against the City of Atlanta, the mayor and city council members in their official capacities. “While there may be different waivers of sovereign immunity for different levels of government, the overarching sovereign immunity is the same,” the City contends. “And this Court’s decisions demonstrate that Atlanta’s immunity extends beyond claims for damages to claims seeking declaratory and injunctive relief based on alleged unconstitutional acts.” The trial court correctly ruled that the 1979 amendment was void from its outset as it “violated the Single Subject Rule and related constitutional provisions at the time it was passed.” The General Assembly’s attempts to continue the amendment also failed to pass “constitutional muster,” the City contends. “Accordingly, the trial court correctly held that the local constitutional amendment is unenforceable and that all of Fulton’s claims must be denied as to all defendants.”

Attorneys for Appellant (County): Patrise Perkins Hooker, Kaye Burwell, Denva Stewart, Emily Hirst

Attorneys for Appellee (City): Emmet Bondurant, David Brackett, Robert Ashe, III, Nina Hickson, Jeffrey Haymore, Robert Highsmith, Jr.

GROGAN V. CITY OF DAWSONVILLE (S18A1425)

The former mayor of the **City of Dawsonville** is appealing orders by a **Dawson County** court dismissing his efforts to appeal the City’s decision removing him from office. He is also appealing the court’s order in favor of the City’s counterclaim to recoup salary and benefits it paid him while his case was pending.

FACTS: In this complex procedural case, **W. James Grogan** was Mayor of Dawsonville until May 2017. A specially called City Council meeting was scheduled May 15, 2017 for the purpose of considering whether to remove Grogan from office. Grogan received notice of the meeting, its purpose, and the grounds for which the Council was considering removing him. Both Grogan and the City were represented by attorneys at the meeting. Both sides presented exhibits and sworn testimony, and a court reporter created a transcript. Following presentation of the evidence alleging the Mayor’s numerous violations of the City Charter and ordinances, the City Council voted to remove Grogan from the office of Mayor.

In response, Grogan first delivered a “direct” – or automatic – appeal against the City in superior court. He later filed a petition for a “writ of certiorari,” requesting the court’s permission to let him appeal, although he failed to serve the Council or the City with a copy of the writ of certiorari, and he failed to name the City Council in the caption of the petition.

Grogan asserted he had the right to remain in office and continue receiving salary and benefits from the City. While the appeal was pending, a judge ruled that Grogan could remain in office and the City would continue to provide Grogan with his salary and benefits. The City filed a counterclaim to force Grogan to pay for legal expenses and pay back his salary and benefits should the City prevail on appeal. The City also filed a motion asking the court to dismiss Grogan's appeal. On Oct. 9, 2017, the court ruled in favor of the City and dismissed Grogan's appeal, finding that it lacked jurisdiction – or the authority to review his case – because Grogan failed to comply with the statutory requirements for initiating an appeal. After Grogan's petition was dismissed due to his failure to follow the procedure set forth by Georgia law, the City sought recovery of the benefits paid to Grogan from his removal date through the dismissal date. During that time, the City had paid \$25,060.88 to Grogan, which included salary, retirement contributions, health insurance and other benefits.

Following the superior court's order of Oct. 9, 2017 denying Grogan's appeal and affirming his removal by the City Council from the office of Mayor, the City called a special election as required by law to fill the vacancy. Grogan ran in the special election to replace himself but was defeated by Mike Eason, who is the current Mayor. In January 2018, both Grogan and the City filed motions relating to the City's counterclaim to get back from Grogan the money it had paid him after his removal and to collect attorney's fees from Grogan. Grogan filed a "Motion to Dismiss Counterclaims" in February 2018. He argued that the counterclaims should be dismissed as they were an abuse of the judicial process filed for the sole purpose of discouraging him, and punishing him for, the exercise of his right to appeal his removal from elected office. In a March 2018 order, the court again ruled for the City and denied Grogan's motion to dismiss the counterclaims. Grogan now appeals to the state Supreme Court.

ARGUMENTS: Grogan's attorneys argue that this appeal invokes the jurisdiction of the Georgia Supreme Court because a constitutional issue is involved, namely application of the Georgia Constitution's Uniformity Clause, as well as Grogan's constitutional rights of free speech and to petition government under both the U.S. and Georgia constitutions. The trial court erred in finding that Grogan's avenue of appeal from his removal was by "certiorari," which allows a court to exercise its discretion in determining whether or not to hear an appeal. The trial court also erred in holding that Grogan's appeal of his removal was not an exercise of his rights to petition and free speech. And the lower court erred in holding that the City had probability of success on its counterclaims. Among other arguments, Grogan's attorneys contend the trial court erred in holding that a recipient of public funds is obligated to return public funds paid to him pending appeal.

Attorneys for the City of Dawsonville argue that, "Appeals from a superior court's review of a local government's quasi-judicial decision 'must be brought by application for discretionary appeal under the procedures set forth in Georgia Code § 5-6-35,'" and therefore this appeal is not properly before the state Supreme Court. Because the City Council's decision that resulted in Grogan's removal constituted a quasi-judicial decision, certiorari was the only method of review available to Grogan. Grogan's appeal of his removal was not an act of free speech or petition of the government. Also, the City established a likelihood of success on the merits of its claim to recoup money it had paid to Grogan while the appeal was pending. And nowhere in its order does the superior court hold that a recipient of public funds is obligated to reimburse the same pending appeal, the City's attorneys argue. Finally, Grogan did not serve the

writ of certiorari on the City within the deadline required, “and said omission is a fatal flaw requiring dismissal.”

Attorneys for Appellant (Grogan): Steven Leibel, Paul Menair

Attorneys for Appellee (City): Dana Miles, Jonah Howell

THE STATE V. TEDDER (S18A1137)

The State is appealing a **Fulton County** judge’s order granting a new trial to a man convicted of murder and criminal gang activity.

FACTS: According to the State’s case at trial, **Dolonte Rasheem Tedder** (aka “DZ”), Jacquavious Tyawn Eggleston, and Quleon Glass (aka “Q”) belonged to the “Young Fame” gang, which the defense claimed was a rap group and not a gang. On Sept. 8, 2014, some Young Fame members were at the Rec Center on Godby Road in College Park, GA when they got into an altercation with members of a rival gang known as “Sex, Money, Murder” (SMM). Learning of the altercation, Tedder, Eggleston and Glass set out in a blue Kia Sorento to find the SMM members. Teandria Tabb, Glass’s girlfriend, was driving. As Tabb drove, Glass was in the passenger seat beside her, Tedder sat behind him, and Eggleston was behind the driver. Each of the three men had a handgun, and besides their car, two other cars of Young Fame members were also looking for the offending SMM members. At a stop light, the Young Fame members in the other cars shouted that the SMM members they sought were sitting on a wall outside an apartment complex the vehicles had just passed. Tabb turned her SUV around and drove in front of the apartments at which time “everybody started shooting.” Eggleston was hanging out the sunroof shooting while Q was hanging out the passenger window shooting. Eggleston later said he could not see what Tedder was doing. But when Eggleston sat back down in the car, he saw that Q had been shot and was bleeding from the back of his head. Eggleston directed Tabb to drive to Atlanta Medical Center South where he and Tabb summoned help from the emergency room while Tedder remained in the car with Glass. There was evidence that Tedder and Glass were close, and they referred to each other as cousins.

Tedder was arrested Sept. 24, 2014. In a written statement to investigating officers, Eggleston stated that right after the shooting, Tedder said, “I shot my brother, I shot him.” Tabb said in her written statement that, “the boys rolled down the windows and started shooting.” On Dec. 12, 2014, Tedder, Eggleston, and Tabb were charged in a joint indictment with malice murder, felony murder, aggravated assault, and possession of a firearm during the commission of a felony. In addition, Tedder and Eggleston were charged with criminal street gang activity, and Eggleston was charged with false statements and writings. Eggleston took a plea, was sentenced to serve 20 years in prison and testified at Tedder’s trial. Tabb also testified at Tedder’s trial without the benefit of a deal. The State’s theory was that while attempting to shoot through the rear passenger window, Tedder had inadvertently shot Glass, and the State argued to the jury the legal concepts of “transferred intent” and party to a crime. Tedder’s defense attorney argued that Tedder was merely present in the vehicle, that the evidence he was armed was inconclusive, and that he had taken no action making him party to a crime. Following trial, the jury found Tedder guilty on all counts and he was sentenced to life in prison plus five years for the weapons charge.

Tedder’s attorney filed a motion requesting a new trial, claiming that his trial attorney had provided “ineffective assistance of counsel” in violation of his constitutional rights. At a hearing on the new trial motion, ballistics expert Christopher Robinson testified that the lack of

gunpowder stippling around Glass's wound, the fact that there did not appear to be blood spatter that would have traveled back toward Tedder if he had fired the shot, that there was what appeared to be a bullet impact on the interior of the driver's door, and that medical testimony was that the bullet had passed through Glass's skull traveling slightly downward, led Robinson to conclude that the fatal shot was not fired from inside the vehicle but from outside. Following the hearing, the trial judge concluded that the trial attorney's failure to secure an independent evaluation of the ballistics evidence constituted deficient performance, and that had such evidence been presented at trial, the outcome "in all reasonable probability" would have been different. "Even though the State's entire case was based on the theory that Defendant was the only person who could have shot Glass, defense counsel never bothered to get an independent expert who could have determined, based on the evidence available, that Defendant could not have shot the victim and the shooter came from outside the vehicle," the judge wrote in his order. "This Court finds that the evidence presented at trial was sufficient to convict Defendant. However, the reason the evidence was sufficient was because Defendant's trial counsel failed to present any evidence on Defendant's behalf." The trial judge subsequently granted Tedder's motion for new trial, and the State now appeals to the Georgia Supreme Court.

ARGUMENTS: The State, represented by the District Attorney's office, argues the trial court erred in concluding that Tedder was deprived of his right to effective trial counsel. "Trial counsel was not incompetent under professional norms for not employing a ballistics expert to opine that the shot which killed Glass (in the back of the head) came from outside the moving vehicle rather than inside," the State argues in briefs. The trial court further erred by ruling that the trial counsel's deficient performance "prejudiced," i.e. severely harmed, his case "because under the law, *regardless of where the fatal shot came from*, Tedder is a party to the crime and the collective intent to shoot rival gang members is transferred to the unintended victim – ironically one of the shooters – Quleon Glass," the State contends. The state urges this Court to reverse the lower court's ruling and reinstate Tedder's convictions and sentences.

Tedder's attorneys argue the trial court properly granted Tedder a new trial on the grounds that his trial attorney performed deficiently under constitutional standards and that but for those deficiencies, there likely would have been a different outcome in his case. A trial attorney "has a duty to make a reasonable investigation or to make a reasonable decision that makes a particular investigation unnecessary," the attorneys argue in briefs. "As reiterated by the trial court here, this is not a case where, after investigation, defense counsel for the Defendant decided to pursue a strategy of not investigating because it would be futile. Instead, this is a case where defense counsel willfully failed to prepare and analyze the evidence available that would have rebutted the State's entire case. Worst of all, defense counsel provided no explanation whatsoever for failing to procure an expert for assistance or to present expert testimony at trial knowing such expert was critical and at the heart of the defense." The evidence the trial attorney failed to present to the jury "could have saved the Defendant from being wrongfully and erroneously convicted" since the "entire case, conviction, and sentence were based on the false assumption that Defendant was the only possible person who shot the victim," Tedder's attorneys argue.

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

Attorneys for Appellee (Tedder): Holly Geerdes, Kevin Marshall