



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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COTTRELL ET AL. V. ATLANTA DEVELOPMENT AUTHORITY ET AL. (S14A1874)

Plans to build a new stadium for the Atlanta Falcons football team may proceed under an opinion today by the Georgia Supreme Court.

A group of Atlanta residents had challenged the financing of the proposed new \$1.2 billion stadium as unconstitutional. But in today's unanimous opinion, written by **Justice Harold Melton**, the high court has rejected all their arguments and found that the financing as structured does not violate the Georgia Constitution.

In April 2014, a **Fulton County** Superior Court judge conducted a bond validation hearing to determine the validity of revenue bonds to be issued by the Atlanta Development Authority, also called Invest Atlanta. The bonds, which would be repaid by hotel-motel taxes, would provide \$200 million in proceeds to go toward building a new retractable-roof stadium to replace the 22-year-old Georgia Dome. The City of Atlanta claimed that the new stadium, to be built next to the Georgia Dome by 2017, would bring in \$155 million in annual revenue, create more than 1,400 jobs, promote tourism and quell threats that Falcons owner Arthur Blank, Home Depot, Inc. co-founder, planned to take the team to another city.

But a small group of Atlanta residents, led by Rev. William Cottrell, former pastor of Atlanta's first black Baptist church, said that two historically black neighborhoods – Vine City and English Avenue – would be hurt by the new development. In February 2014, after the Atlanta Development Authority and Georgia World Congress Center Authority sought validation of the bonds in court, Fulton Superior Court Judge Ural Glanville approved the residents' request to intervene in the bond process.

At issue in this case are a number of complex transactions involving the development authority, the City of Atlanta, the World Congress Center Authority and others. Among them: The bonds would be issued by the Atlanta Development Authority and repaid through the hotel-motel tax. Proceeds from the sale of the bonds would be transferred by the Atlanta Development Authority to the World Congress Center Authority, which would own the new stadium.

Following a hearing, in May 2014, the judge entered a final order, confirming and validating the Series 2014 Bonds and rejecting all objections by the residents. Today's Georgia Supreme Court opinion affirms the lower court's ruling.

As background, the new stadium is to be funded in part by the hotel-motel tax levied under Georgia Code § 48-13-5 (a). Generally hotel-motel taxes only can be levied at a rate of 3 percent or less under the law. However, the law provides an exception by allowing municipalities to levy a 7 percent hotel-motel tax as long as a designated portion of the collected tax proceeds is used to fund a "multipurpose domed stadium facility." Prior to 2010, the taxes imposed under the statute were required to have a stated expiration date "not later than December 31, 2020." In 2010, the General Assembly amended the law by adding a new subsection that extended the expiration date to Dec. 31, 2050, as long as the same portion of the proceeds that had been used to fund the original domed facility was expended to fund a "successor facility" during the extended period.

In their appeal to the Georgia Supreme Court, Cottrell and the other residents contended that the trial court made a number of mistakes. Among them, they argued that the amended state law authorizing extension of the existing Atlanta hotel-motel tax specifically to build a new stadium is unconstitutional because it has turned a "general law" that applies statewide into a "special law" that only applies to one situation.

"We disagree," today's opinion says.

Under the Constitution's Uniformity Clause: "Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law."

"In this regard, a statute would run afoul of the Constitution if it were 'a general law which lack[ed] uniform operation throughout the state or a special law for which provision had been made by existing general law,'" the opinion says. However, "Uniformity does not mean universality," the opinion says. "A law which operates uniformly upon all persons of a designated class is a general law within the meaning of the Constitution, provided that the classification thus made is not arbitrary or unreasonable." Here, the 2010 amendment provides a proper exception to the general law of § 48-13-5 (a) because the statute "applies uniformly on all taxing authorities which come within the scope of its provisions, and because the classification made by the statute is not arbitrary or unreasonable."

"It is of no consequence that subsection (B) happens to only impact the New Stadium Project at this time, as the other counties and municipalities covered under subsection (A) that could have collected a 7 percent hotel-motel tax for purposes of funding their own multipurpose domed stadium facilities at the time that subsection (A) was passed had every opportunity to do so," the opinion says. "We reject the idea that the Legislature is now forbidden from enacting legislation that affects the class of taxing entities covered under subsection (A) simply because only one taxing entity *chose* to take advantage of implementing a 7 percent hotel-motel tax for purposes of funding a multipurpose domed stadium facility over 20 years ago."

Furthermore, “there is nothing arbitrary or unreasonable about allowing the same taxing entities that already have experience paying for a multipurpose domed stadium facility through the collection of a 7 percent hotel-motel tax...to collect such a tax in the future to fund a different stadium after the first tax has expired.”

“Accordingly, we find that [the amended statute] is constitutional.”

Attorneys for Appellants (Cottrell): Thelma Wyatt Moore, John Woodham

Attorneys for Appellees (Development Authority): Douglass Selby, Matthew Calvert, Ashley Cummings, Samuel Olens, Attorney General, Denise Whiting-Pack, Thomas Curvin, Matthew Nichols

THE STATE V. LAMPL (S14G0591)

The perjury charge against a former city manager of Morrow, GA, has been reinstated under a decision today by the Supreme Court of Georgia.

In today’s unanimous opinion, written by **Justice Carol Hunstein**, the high court has reversed a Georgia Court of Appeals decision that upheld a lower court’s ruling dismissing the perjury charge against John James Lampl. Also with today’s decision, when Lampl’s case goes to trial, his statements to a special grand jury investigating public corruption could be allowed in as evidence.

The **Clayton County** case began in 2011 with a request by the district attorney that a “special purpose grand jury” be impaneled to investigate alleged public corruption. The Chief Judge of the Clayton County Superior Court entered an order impaneling the special grand jury “for the purpose of investigating public corruption and various crimes allegedly committed by currently or previously elected county officials and county employees.” The special grand jury subpoenaed various witnesses, including Lampl, who testified before it in June 2011. As a result of its findings, in September 2011, Lampl was indicted by a regular grand jury for the offenses of conspiracy in restraint of free and open competition, false statements and writings, and perjury related to his involvement in a failed commercial development near Southlake Mall known as Olde Towne Morrow. Because Lampl was neither a publicly elected county official nor a county employee, and never had been one, his attorney filed a motion to dismiss the indictment on the grounds that it stemmed from an illegal investigation which improperly targeted him and exceeded the scope of the court order impaneling the special purpose grand jury. Lampl had been a *city* employee, not a *county* employee, and the Olde Towne Morrow project was undertaken by the city, not the county. The trial court agreed with Lampl that the special purpose grand jury had exceeded its authority in investigating a non-county project and targeting a non-county employee, that his testimony before the special purpose grand jury after being subpoenaed was unlawfully obtained and would be inadmissible at trial, and that the perjury charge should be dismissed. On appeal, the Court of Appeals upheld the lower court’s ruling. The State then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in concluding the trial court properly dismissed the perjury charge against Lampl and properly ordered the suppression of his statements.

“We agree with the courts below that the special purpose grand jury exceeded its authority in investigating the Olde Towne Morrow project and Lampl’s involvement in it without any effort to connect that project or Lampl to potential crimes by county officials or employees,” today’s opinion says. However, “We conclude that the superior court erred in dismissing the

perjury count and in suppressing Lampl's grand jury testimony as sanctions for the special purpose grand jury's overreach, because the conduct of the special purpose grand jury, though improper, did not constitute a violation of Lampl's constitutional rights or otherwise rise to the level necessary to justify these sanctions."

"Dismissal of an indictment and suppression of evidence are extreme sanctions, used only sparingly as remedies for unlawful government conduct," the opinion says. "Unless expressly authorized by statute, such sanctions generally 'cannot be imposed absent a violation of a constitutional right.'" None of the state's grand jury statutes authorizes dismissal of an indictment or suppression of evidence as a remedy for a grand jury's overreach. "While Lampl attempts to elevate the overbreadth of the investigation into the constitutional realm by characterizing it as a due process violation, we do not agree with this characterization," the opinion says. There was no violation of due process, as Lampl contends, nor did the act of subpoenaing him to testify violate his constitutional right against compelled self-incrimination.

"It is well-established that 'the Fifth Amendment does not prevent the grand jury from subpoenaing [a] prospective defendant, or target, to appear as a witness,'" the opinion says. "Rather, the Fifth Amendment operates in grand jury proceedings to permit witnesses who are subpoenaed to refuse to answer specific questions, the answers to which the witness reasonably believes would be incriminating. Here, Lampl never sought to assert his privilege, either prior to or during his testimony before the special purpose grand jury, and thus he has suffered no violation of his Fifth Amendment rights."

The Georgia Constitution's privilege against self-incrimination "generally functions in this same manner," the opinion says. Furthermore, Georgia's "evidence code prohibits a grand jury from compelling the very appearance of a witness – as opposed to his incriminating testimony in response to specific questions – only where that witness has been 'charged in [a] criminal proceeding with a criminal offense.'"

"Here, there is no evidence in the record that at the time Lampl testified before the special purpose grand jury, he had been actually charged in any indictment or presentment," today's opinion says. "Accordingly, while the special purpose grand jury lacked proper authority to subpoena Lampl, the act of doing so did not violate Lampl's privilege against compelled self-incrimination in any of its constitutional or statutory incarnations."

Attorneys for Appellant (State): Tracy Lawson, District Attorney, Elizabeth Baker, Dep. Chief Asst. D.A., Kathryn Powers, Dep. Chief Asst. D.A.

Attorney for Appellee (Lampl): Brian Steel

JEFFREY V. THE STATE (S14A1418)

The Supreme Court of Georgia has upheld the murder conviction and life without parole prison sentence given to a **Clayton County** man who was tracked down in Ohio after he was featured on the television show "America's Most Wanted" as a suspect in his wife's murder.

In today's unanimous opinion, written by **Justice Carol Hunstein**, the high court is nevertheless sending the case back to the trial court to correct an error and impose an additional sentence on one of the less serious crimes of which the man was convicted.

According to the facts at trial, Corissa Friends Jeffrey and Wisdom Jeffrey began dating in 2007 when she was 18 years old. They moved into an apartment in **Clayton County** and married in 2009 after she gave birth to a baby girl. Her friends and family testified that Wisdom

beat his wife on several occasions, causing visible injuries. They said he was jealous and possessive of her and questioned whether the couple's young daughter was even his. He accused his wife of having an affair with a former boyfriend from high school. At one point, Corissa told her best friend from childhood that Jeffrey had beaten her in the head just as a boxer would hit a man, then refused to take her to the hospital. Corissa told this friend that she believed her husband was "going to kill me one day."

On Father's Day in June 2010, Corissa called her friend and said that due to her husband's violence, she was going to call police. Later that night, a neighbor heard a woman screaming and saw Wisdom dragging Corissa across the apartment complex parking lot by her hair while striking her in the face with his other fist. The neighbor did not know the couple, but got out of his car to help the woman. Wisdom let go of Corissa and she fled. As she was running away, the neighbor said Wisdom threatened him and made a motion as if to draw a weapon. A Clayton County police officer arrived on the scene and after interviewing the neighbor and Corissa, arrested Wisdom for simple battery and family violence. He was later released on bond with the condition that he stay away from his wife and her apartment. At some point, Wisdom moved into another apartment. Despite the condition to stay away from his wife, he started calling her grandmother and friends looking for her. The grandmother testified he told her he'd gone through his wife's cell phone and found text messages from another man. He complained to his wife's friend that Corissa wouldn't return his calls. The afternoon before the murder, he called the grandmother "frantic" because Corissa had not been at her apartment the night before.

Corissa's co-worker testified that on Aug. 10, 2010, they had worked late at Royal Cosmetic Surgery where she assisted a physician. When she was done, the co-worker walked Corissa safely to her car at about 11 p.m., then returned to the building. After Corissa drove away, someone began knocking on the office door. Because of the late hour, the co-worker did not answer it but testified he saw a man walking away.

At 12:18 a.m., Corissa called 911 and said her husband was inside her apartment in violation of the condition of his bond. Officer Robert Kersey of the Riverdale Police Department responded and found Wisdom in the bedroom. The officer testified Corissa was dressed in nursing scrubs and appeared nervous but calm. He said Wisdom acknowledged he was aware of the "no contact" condition of his bond. To obtain the details of the bond, the officer tried to contact the Clayton County Sheriff's Department. When the sheriff's office did not respond, instead of arresting Wisdom, he drove him across the street to the Riverdale police station and instructed him to wait for someone to pick him up. Kersey was then dispatched to another call. At 1:58 a.m., Kersey again responded to a 911 call from Corissa who was screaming her husband's name and pleading "no." When the officer arrived the second time, he had to kick the front door open. He found Corissa on the floor in the rear of the apartment by the bathroom. She was dead from several gunshot blasts, including one to the back of her head. A shotgun, which was later identified as the murder weapon, was found near the front door. Wisdom's fingerprint was on it. A year and a half later, after the case was twice aired on "America's Most Wanted," Wisdom was arrested in Ohio. Photographs introduced at trial showed he had significantly altered his appearance since his wife's death.

In December 2012, a Clayton County jury convicted Wisdom Jeffrey of malice murder, four counts of felony murder, four counts of aggravated assault and two counts of possession of a

firearm during the commission of a felony, and he was sentenced to life without parole plus five years. He then appealed to the state Supreme Court.

In today's opinion, the high court finds that the evidence at trial "was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Jeffrey was guilty of all the crimes of which he was convicted."

And it rejects his contention that his trial attorney rendered ineffective assistance by failing to ask the judge to instruct the jury that it could consider whether he was guilty of the less serious crime of voluntary manslaughter as opposed to murder.

"In order to have been entitled to an instruction on voluntary manslaughter, Jeffrey would have had to show at least 'slight evidence...that the victim seriously provoked [him], causing [him] to kill the victim solely as the result of a sudden, violent, and irresistible passion,'" the opinion says. Here, "the evidence reflects that Jeffrey made a conscious decision to defy the no-contact order almost immediately after being escorted away, returning to the victim's apartment, shooting her dead, and fleeing."

"As there was no evidence to support an instruction on voluntary manslaughter, trial counsel was not ineffective in opting not to request such a charge," today's opinion says.

Although the high court finds no error with the jury's verdicts, "we have noted an error with regard to the merger of certain counts for judgment and sentencing."

Therefore, the Court is returning the case to the trial court for the imposition of an additional sentence on one count of family violence aggravated assault.

Attorney for Appellant (Jeffrey): Brian Steel

Attorneys for Appellee (State): Tracy Lawson, District Attorney, Elizabeth Baker, Dep. Chief Asst. D.A., Kathryn Powers, Dep. Chief Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

CORDERO V. THE STATE (S14A1336)

The Supreme Court of Georgia has unanimously upheld the murder and child abuse convictions of Marco Cordero for the 2008 death of his 4-year-old son, Mark Mendez.

Cordero appealed his convictions and life prison sentence, arguing that he was denied effective assistance of counsel at trial and that the **Fulton County** judge erred by sentencing him on both the felony murder charge caused by child cruelty and the felony child cruelty charge stemming from events that occurred months before.

But in today's opinion, written by **Justice Carol Hunstein**, the high court has rejected Cordero's arguments, and "we readily conclude that the evidence was sufficient to authorize a rational jury to find beyond a reasonable doubt that Appellant was guilty of the crimes of which he was convicted."

Today's 20-page opinion outlines a tale of brutal child abuse that culminated in a little boy's death. The medical examiner, who performed the autopsy, found more than 60 scars, contusions, abrasions, lacerations and hemorrhages over the child's battered body, all of which he said would have caused pain. The nurse at Piedmont Hospital testified the child's condition when his father brought him to the hospital was the worst she had seen in her 30 years as an emergency room nurse.

According to the facts of the case, Cordero lived with his wife, Sabina Mendez, and their three young children, including Mark, in an apartment in the basement of a hotel. The hotel's

owner allowed them to live there in exchange for Cordero doing some work for him. According to Mendez, who in a plea bargain pleaded guilty to only one count of child abuse in exchange for her testimony against her husband, Cordero caused all of their son's injuries. At trial, Cordero's defense was that his wife spent more time with the boy while he worked and that she caused all of the child's injuries.

Mendez testified that by August 2007, Mark began behaving "naughty" by smearing his feces on the walls, and her husband began to regularly beat him, using a screwdriver and a plunger, and inflicted other injuries with knives and machetes. Cordero once beat his son with a broom until the handle broke off, at which point he forced the handle into the child's mouth until he "broke his mouth." In November, after the child dirtied the bathroom with feces, his father bathed him in ice water, which he began doing regularly. In December, the mother said she heard her son crying and yelling, and found Cordero hitting the child in the bathroom with a plunger, a wet towel, and pieces of wood. The next day, Cordero rubbed a habanero chili all over the boy's body, including his genitals and buttocks, before stuffing the chili in the child's rectum.

On Jan. 16, 2008, Cordero tied the little boy up with shoelaces and hung him upside down by his feet from the shower door. After Cordero left, Mendez freed the child, who then defecated and began smearing it around. When Cordero returned, he beat the child with a piece of wood and belts and tied him up with wire. Mendez testified he told her he was beating the boy "for the devil to come out." Cordero also punched and kicked the little boy that day, which caused his nose and eyes to bleed. Cordero then left for work, leaving the child tied up with wire.

The next day, Mark was vomiting and told his mother his stomach hurt. She asked her husband to take him to the hospital but he refused. That night, Cordero made the child sleep in the shower without a blanket or a pillow. On Jan. 18, 2008, Mendez found her son in the shower with a fever, vomiting and looking extremely ill. When she told her husband, he said he should "eat his vomit back." He then went to work for the hotel owner. Eventually, after Cordero continued to refuse to take the boy to the hospital, Mendez asked the hotel owner to come to the apartment. Once the owner saw the little boy, he told Cordero to take the child to the hospital.

Cordero arrived at Piedmont Hospital at 12:44 p.m. on Jan. 18. He handed the little boy to the charge nurse and told her his son had fallen in the bathtub the night before, but from her observations, the child's injuries were not consistent with a fall. The child was blue, covered in vomit and bruises, was not breathing and had no pulse. Despite efforts to resuscitate him, Mark never regained consciousness and was pronounced dead six minutes after arriving. Hospital personnel took photos of his injuries and called police.

At trial, the medical examiner testified the child died from generalized blunt force trauma to his head, torso and extremities. He said no one particular blow would have killed the child but rather the "constellation of all the injuries" he'd suffered eventually caused him to go into shock, which caused an irregular heartbeat, resulting in death. An expert in forensic pediatrics and child abuse testified that the boy's multiple injuries and beatings would have caused the child excessive mental pain and that the little boy's smearing of his feces on the walls was a response to the traumatic physical abuse he suffered.

In March 2011, the jury convicted Cordero of felony murder and other serious crimes for events occurring Jan. 16-18, 2008, which resulted in the death of 4-year-old Mark Mendez. The jury also convicted him of cruelty to children in the first degree for the non-fatal injuries he caused the child between Sept. 1 and Dec. 31, 2007. He was sentenced to life in prison for

murder and 20 years to run concurrently for child cruelty. Cordero then appealed to the state Supreme Court. He argued that in response to jurors' questions after they began deliberating, the trial judge may have confused them and led them to believe they only had to find Cordero guilty of the underlying felony of child abuse to find him guilty of felony murder. His own attorney had recommended the answers the judge gave, and Cordero argued his attorney provided "ineffective assistance of counsel," in violation of his constitutional rights.

But in today's opinion, the high court concludes that Cordero "has failed to show that there is a reasonable probability that, but for counsel's error, the outcome of the trial would have been more favorable to him." The Court has also rejected Cordero's argument that the events of Sept. 1-to-Dec. 31, 2007, should have merged into the felony murder verdict and he should not have received a separate sentence for them.

"We disagree," the opinion says. In this case, there was a deliberate interval between the earlier acts that caused injury and the later acts that – combined with the earlier ones – caused death. Here, "we conclude that under the circumstances of this case, the acts of cruelty that occurred between September and December 2007 constitute an 'independent act' separate and apart from the January 2008 acts of cruelty, on which the underlying felony for felony murder was based."

"Moreover, to conclude that the multiple acts of cruelty committed over many months against the victim in this case, when separated by a significant interval, constitute only one crime would mean that Appellant was permitted to brutalize the victim for many months with impunity," the opinion says. "Judgment affirmed."

Attorney for Appellant (Cordero): Sheueli Wang

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Joshua Morrison, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Katherine Iannuzzi, Asst. A.G.

GREENE COUNTY DEVELOPMENT AUTHORITY ET AL. V. STATE OF GEORGIA ET AL. (S14A1507)

In a 6-to-1 decision, the Georgia Supreme Court has upheld a **Greene County** court ruling denying the validation of revenue bonds to build additional facilities for a local charter school.

The Greene County Development Authority, the charter school and the county had appealed the local court ruling, arguing the lower court erred in a number of ways, including by denying validation of the bonds because they failed to "show that the proposed project is reasonable, sound or feasible."

In today's ruling, however, **Justice Keith Blackwell** writes for the court that, "Although the record in this case might not have demanded a finding that the Authority's proposal was not sound, feasible, and reasonable, we conclude that it permitted such a finding."

As background, in 2006, the Greene County Board of Education approved a petition by Lake Oconee Academy, Inc. to open a charter school. Charter schools are public schools that operate according to a "charter" or contract, which includes rules and standards that may differ from those that apply to a school district's other public schools. In 2009, the Greene County Board of Education entered into an intergovernmental contract with the Greene County Development Authority to finance construction of facilities for Lake Oconee Academy through

the issuance of revenue bonds. The agreement provided that the school board would pay the development authority amounts sufficient to make payments on the bonds from revenues generated by an ad valorem tax. The academy, in turn, would lease the facilities from the development authority and operate as a charter school. A bond validation proceeding was filed in superior court requesting approval for the issuance of \$17 million in bonds, and the judge validated the bonds. The original facilities were to house kindergarten through the eighth grade, with the academy's charter contemplating eventual expansion of the school to include ninth through twelfth grades.

In 2014, Greene County and the development authority entered into an intergovernmental contract proposing the issuance of \$14 million in bonds to construct additional facilities for the Academy so it could expand to include ninth through twelfth grades, and a bond validation proceeding was filed in court. This time, however, the Board of Education was not involved, and a group of citizens came forward and objected. Following a hearing, the judge denied the bond validation on five separate grounds. Greene County, the Greene County Development Authority, and the Lake Oconee Academy then appealed to the state Supreme Court.

“When presented with a petition for the validation of revenue bonds, a trial court must consider whether the proposal to issue those bonds is ‘sound, feasible, and reasonable,’” today’s opinion says. “As this Court has explained before, whether a proposal to issue bonds is sound, feasible, and reasonable is a question for the trial court, and its findings about soundness, feasibility, and reasonableness must be sustained on appeal if there is any evidence to support them.”

While the trial judge did not explain in his order exactly why he concluded the proposal was unsound, and the County and Academy did not appear to ask him for a detailed explanation of that finding, “we can glean from the record some concerns about the proposal that the trial court may have had,” the opinion says. For instance, officials claimed that the purpose of the project was to promote economic development, but the expert witness “offered only scant and conclusory testimony... about the *particular* impact upon economic development that construction of the proposed facility for the use of the Academy might be expected to have,” the opinion says. “Although the trial court did not speak in detail about the credibility and weight of this testimony, the trial court did express at the hearing a concern about the extent to which the Authority’s proposal would, in fact, benefit the citizens of Greene County. In addition, the trial court seemed to have concerns about several aspects of the way in which the project was proposed to be structured, noting the limited involvement of the Board of Education,” and the ability of the Academy to purchase the facilities for only \$1 after the indebtedness on the bonds was paid.

“Taken together, all these concerns would have permitted the trial court to find, as it did, that the Authority’s proposal to issue \$14 million in revenue bonds was not a sound, feasible, and reasonable one, especially considering the cost to the taxpayers of Greene County and that the evidence about the economic benefit of the proposal was not overwhelming.”

Gwinnett County Chief Judge Melodie Snell Conner, who was designated to sit in for Justice David Nahmias on this case, dissented, although not in writing.

Attorneys for Appellants (County): L. Joseph Loveland, William Holby, Letitia McDonald, Timothy Lee, Richard Schmidt, Joseph Reitman, Jr., Donald Cronin

Attorney for Appellees (Citizens): Brenda Trammell

HUGHES V. THE STATE (S14G0622)

The Supreme Court of Georgia has unanimously ruled that when a young man goes on trial in **Muscogee County** for causing a fatal wreck as a teenager, the jury will get to hear the results of his blood test for alcohol and drugs.

Today's ruling, written by **Justice Keith Blackwell**, upholds a decision by the Georgia Court of Appeals, although it concludes that while the appellate court reached the right result, it applied the wrong standard of review.

According to facts in the record at about 5:30 a.m. on June 27, 2011, officers of the Columbus Police Department were dispatched to Macon Road in response to a severe motor vehicle wreck. Then 17-year-old Jack Hughes had driven his pickup truck through a red light and crashed into a vehicle driven by Jerome Owens before hitting a telephone pole. Owens was killed. The airbag in Hughes' vehicle had deployed during the collision.

Officer Dustin Allen, one of the first on the scene, found Hughes standing by his vehicle, and he approached to see if Hughes was OK. Hughes told the officer he believed he had fallen asleep while driving. Allen testified he observed that Hughes was unsteady on his feet, his eyes were red and glassy, and he was slow and evasive in response to questioning. Soon after, Corporal T.R. Greene arrived and took over the investigation. Greene also observed that Hughes was slow to answer questions, was unsteady on his feet and seemed to have trouble staying awake. According to briefs filed in the case, Hughes told Greene he had had a long day before the accident, which had started out with an early morning practice and baseball game that ended at 11 a.m., followed by work from 12 p.m. to 4 p.m. He said he took a short nap after work, then went to a party at his girlfriend's house from 9 p.m. to 3 a.m. Hughes admitted there was alcohol at the party but denied consuming any. When asked what had happened in the accident, Hughes stated he had hit a telephone pole; he was unaware he had struck another vehicle. A third officer also noted Hughes had glassy eyes, was unsteady, and was slow to respond to questions. The officers did not ask Hughes to perform any field sobriety tests. Greene then arrested Hughes for a red-light violation and homicide by vehicle. Hughes was read his Miranda rights and searched. During the search, the officers found socks in Hughes' pockets in which there were small plastic baggies containing a number of pills. Greene suspected that some of the pills were Ecstasy and, taking into consideration his earlier observations of Hughes' demeanor, he believed probable cause existed that Hughes was under the influence of drugs. He then read the "implied consent" warning to Hughes, and Hughes agreed to be taken to a hospital for a State-administered blood test. (Under the state's "implied consent" statute, a person operating a motor vehicle is considered to have agreed to a chemical test for the presence of alcohol or drugs if: 1) the person has been involved in a wreck involving a serious injury or fatality, and 2) the investigating officer has probable cause to believe the person was driving under the influence.)

Hughes' attorneys filed a motion to suppress the results of the blood test when the case goes to trial, arguing the officers lacked probable cause to believe he was driving under the influence of drugs. At the hearing on his motion, the only witnesses who testified were the officers who responded to the scene. Following the hearing, the trial court granted Hughes' motion, finding that the officers did not have probable cause to invoke the implied consent statute. In his order, the trial judge noted that the officer who gave the implied consent warning

testified he had no reason to give the warning prior to discovering the pills. The judge found that the decision not to conduct field sobriety tests supported a finding that the officers did not suspect Hughes of DUI; that there was also no evidence of drugs or alcohol in Hughes' system when the officer read the warning; and that merely finding drugs without evidence of recent consumption may furnish a suspicion but not probable cause. Furthermore, the trial court found, Hughes' demeanor was consistent with the after-effects of a traumatic wreck where an airbag deployed. On appeal, however, the Court of Appeals reversed the trial court's ruling, finding that the evidence showed the officers had a "reasonable and objective basis" for believing Hughes had been driving in violation of the law. "Under the totality of the circumstances," a majority of the Court of Appeals ruled, the facts were sufficient to give probable cause upon which to request a blood test, "regardless of whether a jury might later disagree with their suspicions as to why the collision occurred."

Hughes then appealed to the Georgia Supreme Court, which states in today's opinion that, "although we find that the Court of Appeals applied the wrong standard of review, we conclude that it nevertheless reached the right result. Accordingly, we affirm the judgment of the Court of Appeals."

"When the facts material to a motion to suppress are disputed, it generally is for the trial judge to resolve those disputes and determine the material facts," today's opinion says. "This principle is a settled one...."

The majority of the Court of Appeals accepted the findings of the trial court, but improperly then "supplemented those findings with additional findings of its own, and as it searched the records for additional facts to find, the majority failed to view the record in the light most favorable to the findings and judgment of the trial court."

"For instance, the majority found that Hughes had dilated pupils and was evasive in his responses to questions from the officers, even though the trial court said nothing about such things in its order. We do not know – and the majority of the Court of Appeals could not have known – exactly why the trial court said nothing about these things. But we do know that the trial court *could* have assigned no weight at all to the testimony of the officers about these things to the extent that it found that their testimony was not credible."

Nevertheless, based on the findings made by the trial court, "we conclude that the majority of the Court of Appeals reached the right result, notwithstanding its misapplication of the standard of review," the opinion says. "Altogether, the undisputed facts and the disputed facts found by the trial court establish that the officers in this case had probable cause to believe that Hughes had been driving under the influence of drugs."

"The facts and circumstances known to the officer must be examined altogether, for it is the totality of those facts and circumstances that matters, not any one fact or circumstance standing alone."

In this case, the "officers had reason to believe that Hughes had driven through a red light and caused a fatal accident. They had reason to think – based on their observations of Hughes at the scene of the accident – that Hughes was under the influence of some intoxicant. And they knew that Hughes had a number of unknown pills on his person. Standing alone, any one of these circumstances would not be enough for a reasonable officer to conclude that Hughes probably had been driving under the influence.... Taken together, a reasonable officer could conclude, we think, that driving under the influence was an equally or more probable explanation

for the facts and circumstances known to the officers than an improbable coincidence of multiple innocent explanations.”

“For these reasons, we agree with the majority of the Court of Appeals that the facts and circumstances known to the officers were sufficient to establish probable cause, and the trial court, therefore, erred when it granted the motion to suppress.”

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

- * Deimeyon Xavier Allen (Fulton Co.)
- * Reginald Cooper (Dougherty Co.)
- * Keith Jerome Roberts (Clayton Co.)
- * Perrie Smith (DeKalb Co.)

- ALLEN V. THE STATE (S14A1884)**
- COOPER V. THE STATE (S14A1658)**
- ROBERTS V. THE STATE (S14A1497)**
- SMITH V. THE STATE (S14A1715)**