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

SUMMARIES OF OPINIONS

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CHAN V. ELLIS (S14A1652)

Under an opinion today by the state Supreme Court, a man with a website has won his appeal of a **Muscogee County** court ruling that granted a Permanent Stalking Protective Order to a woman who sued him over negative postings about her that appeared on his website.

In today's opinion, written by **Justice Keith Blackwell**, the high court has reversed the lower court's ruling, finding that although the postings may have been "distasteful and crude," they did not constitute stalking under the law.

According to the facts of the case, Matthew Chan runs a website called ExtortionLetterInfo.com, which posts commentary he and others write criticizing people he believes go overboard in their enforcement of copyright laws. Linda Ellis is a poet, and she has been the subject of nearly 2,000 posts on Chan's website. Ellis is the author of a poem entitled, "The Dash," which refers to the dash on a tombstone between one's dates of birth and death. The poem suggests people should spend less time focused on monetary pursuits and more on loving each other and treating people with respect. According to briefs filed in the case, Chan has complained on his website that Ellis routinely sends legal demand letters to parties that violate her copyright by sharing this poem, and she and her "legal team secretly earn significant income from her copyright enforcement letter program." Among the posts on Chan's website:

* In a comment that sarcastically referred to Ellis as an "Internet icon," Chan wrote Ellis "wanted to be right. Well she is 'dead' right now."

* In a lengthy post about Ellis, Chan implied he would publicize embarrassing information about her if she persisted in her copyright enforcement tactics, and noted that he

waited too long to shame another "copyright troll" – saying in reference to Ellis, "I will pull that trigger much quicker if need be. And I don't fight alone."

* In another post about Ellis, Chan referred to his "attack machine" and predicted "there will be some collateral damage to innocents on her side but it doesn't matter to me. This could mean exposing information on her family members." In the same posting he wrote, "I'm holding back for a couple of good reasons. One of them is your daughter. Yes, I know a lot about her."

* In addition to posting the name of Ellis' subdivision of Roswell Downs, as well as the names of her husband and daughter, Chan allowed a posting by someone else entitled, "Matthew Chan visits Linda Ellis's hometown of Marietta, Georgia," which included a photo of Ellis' home. He himself replied in his own posting: "I'm not going to say where exactly in Marietta I was, but let's just say I was in East Cobb very close to a Kroger grocery store, essentially a short distance from Roswell Downs."

* The website also contained a crude drawing, which Ellis referred to as "sexually explicit," showing five people not wearing pants and covering their crotches with their hands. A photo of Ellis's head was photo shopped onto one of the characters, and the caption read: "Never Get Caught With Your Pants Down! Ready…Aim…Fire!"

Ellis sued Chan under Georgia's stalking statute (Georgia Code § 16-5-90), which forbids one from making "contact" with another person for the purpose of harassing and intimidating the person without that person's consent. "Contact" is defined in the statute as any communication "in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device." The term "harassing and intimidating" is defined in the statute as a "knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family…."

On March 6, 2013, the trial court granted Ellis a final Permanent Stalking Protective Order, concluding that Chan communicated with Ellis via the Internet for the purpose of harassing and intimidating her and that Ellis was placed in reasonable fear for her safety. The court forbid Chan from posting personal information about Ellis or contacting her directly, and it prohibited him from saying anything in the future about Ellis. Chan appealed to the state Supreme Court, arguing that the court order violated his constitutional First Amendment rights by prohibiting him from criticizing her business practices. Specifically, he argued that publishing commentary *about* another, as opposed to directing communications *to* another, does not amount to "contact" as the term is used in the stalking statute.

"With that contention, we agree, and we reverse the judgment of the trial court," today's opinion says.

"Although one may 'contact' another for the purposes of the statute by communicating with the other person through any medium, it nevertheless is essential that the communication be directed specifically *to* that other person, as opposed to a communication that is only directed generally to the public," the opinion says. "That a communication is *about* a particular person does not mean necessarily that it is directed *to* that person."

"The publication of commentary directed only to the public generally does not amount to 'contact,' as that term is used in § 16-5-90 (a) (1), and most of the posts about Ellis quite clearly cannot form the basis for a finding that Chan contacted Ellis."

"To the extent that a few of the posts may come closer to 'contact' – including, for instance, the open letter to Ellis, which Chan may actually have intended as a communication to Ellis – their publication still does not amount to stalking," the opinion says. "Even assuming for the sake of argument that Chan 'contacted' Ellis by the publication of any posts, the evidence fails to show that such contact was 'without [her] consent.'" The evidence shows Ellis visited the website and even registered herself as an authorized commentator on the website.

"Generally speaking, our stalking law forbids speech only to the extent that it is directed to an unwilling listener, and even if Ellis did not like what she heard, she cannot be fairly characterized as an unwilling listener. Ellis failed to prove that Chan 'contacted' her without her consent, and the trial court erred when it concluded that Chan had stalked Ellis."

Attorneys for Appellant (Chan): Oscar Michelen, William McKenney
Attorney for Appellee (Ellis): Elizabeth McBride

WOODARD V. THE STATE (S14A1532)

The Supreme Court of Georgia has upheld the convictions and sentences of life without parole given to William Maurice Woodard for the 2008 murders of **DeKalb County** Police Officers Eric Barker and Ricky Bryant, Jr.

In this high-profile case, Woodard appealed to the high court, arguing that the trial judge improperly undermined his defense through the instructions he gave to jurors before their deliberations. But in today's opinion, written by **Justice David Nahmias,** the high court has rejected his arguments.

According to the facts of the case, on Jan. 15, 2008, Barker and Bryant were working off-duty security at the Glenwood Garden Apartments when Woodard arrived with Herbie Durham to buy cigarettes and beer at an illegal "shot house" known as "The Candy Lady." Woodard was a three-time convicted felon and was illegally carrying an unregistered .40 caliber Glock, which he called his "baby," according to briefs filed in the case. After making his purchase at the shot house, using a counterfeit $50 bill, Woodard was on his way back to Durham's car when the man who had sold him the beer and cigarettes realized the money was counterfeit and ran after Woodard, demanding his items and change back. Woodard told him to go back to his apartment because police were already in the apartment complex. The man went back inside to avoid attracting the officers' attention to his illegal shot house. He then looked out his window down to the parking lot and saw what transpired next.

After Woodard got into the car, Officer Barker approached the driver's side and asked Durham to turn off the car and provide his driver's license. The officer said he smelled marijuana and asked Durham if he had any. Durham said no, turned off the car and gave the officer his license. Officer Bryant moved toward the passenger side as Barker also asked Woodard for identification, but Woodard did not produce anything. Bryant then opened the car door and asked Woodard to get out. When Woodard did not comply, Bryant pulled him out and placed his hands on the roof of the car. Bryant, who was standing behind Woodard, started to frisk him, but Woodard scuffled to avoid being patted down. Barker ran around to the passenger side to assist Bryant just as Woodard broke free from Bryant and drew his gun. Woodard fired at the officers, striking each three times. Bryant, 26, was shot at close range underneath his safety vest. Barker, 33, was shot right above his left eye and died at the scene. According to the briefs, Bryant was later pronounced dead at Grady hospital from a ruptured aorta, which caused him to bleed to

death. Durham flagged down a tow-truck driver, who called 911. Woodard fled the scene and went to his girlfriend's house. She later testified he told her he had gotten rid of his gun and "he was under the recidivist act and he wasn't going back to jail; he would have court in the street."

In April 2008, Woodard was indicted on two counts each of murder, possession of a firearm during the commission of a felony, and possession of a firearm by a convicted felon. The State announced it would seek the death penalty. At trial, Woodard testified on his own behalf and told the jury he had shot the officers in self-defense. He acknowledged he was armed the night of the killings, despite his prior felony convictions and current probation. But he claimed the officers forcibly removed him from Durham's car and when he could not produce identification, started hitting him with a baton. He said they fired first and he returned their fire in fear for his life.

The jury found him guilty of all charges and following the sentencing phase of the trial, recommended life without parole, rather than death. The judge sentenced Woodard to two consecutive terms of life without parole plus five years for possession of a firearm during commission of a felony. He then appealed to the state Supreme Court, arguing that several of the trial court's jury instructions undermined his sole defense of justification by lessening the State's burden of disproving his self-defense claim beyond a reasonable doubt. In particular, he challenged the jury instruction that a police officer has a general duty to enforce the law 24 hours a day, and the instruction that the mere odor of marijuana establishes the probable cause required for an arrest.

"Appellant has failed to demonstrate error…in the jury instructions he now disputes," today's opinion says. "Law enforcement officers have a general duty to enforce the law and maintain the peace, and this duty exists 24 hours a day, including when an officer is working a private security job." Furthermore, the court never said that odor alone of marijuana establishes probable cause for an arrest. "Instead, the court correctly advised the jury that the information that a police officer obtains through all five senses, including smell, may be considered in determining whether, under the totality of the circumstances, an arrest was permitted," the opinion says.

Woodard's attorneys also challenged the trial judge's instruction to the jury that "a person is not justified in using force if that person…is attempting to commit, is committing, or is fleeing after the commission or attempted commission of a felony." This instruction, which is a standard instruction used by courts, tracks nearly verbatim Georgia's statute that establishes when the use of force is justified in defense of oneself or others. "One would think that a trial court could not err in instructing the jury using the language of the applicable statutory law," the opinion says.

Woodard's attorneys based their argument on the Georgia Supreme Court's 1991 decision in *Heard v. State*, which said that this particular statute (Georgia Code § 16-3-21) should apply only "where it makes sense to do so, for example to a burglar or robber who kills someone while fleeing," but not to a defendant who killed someone while committing the felony of possessing a firearm as a convicted felon. Therefore, the prohibition against the use of force should not apply to Woodard, because the felony he was found guilty of committing when he shot and killed the officers was possession of a firearm by a convicted felon.

In today's opinion, however, "We conclude that the trial court did not commit reversible error in charging the jury using the language of § 16-3-21 (b) (2), because *Heard* is not good

law." The State asked the Supreme Court to overrule *Heard* and with today's opinion, the high court has done so, finding the *Heard* ruling was "a stark departure from settled law and takes the untenable position that this Court should apply statutes only when it seems fair and sensible to us to do so.

"The better course is simply to overrule *Heard* now, before it becomes any more entrenched. Accordingly, we hereby overrule *Heard* and restore the law to its pre-*Heard* condition."

In a special concurrence, **Justice Robert Benham** agrees with the judgment of upholding Woodard's convictions and sentences, but, "I take issue with the decision to overrule *Heard v. State."* Woodard's trial attorneys did not object to the instruction at trial and indeed requested that the judge give the standard instruction which included the language from the statute. Because Woodard failed to raise the issue at the trial level, he is prohibited from doing so for the first time on appeal. Therefore, the special concurrence says, "we need go no further in analyzing whether *Heard* remains good law. In fact, in my opinion, it is not prudent to overrule a long-standing opinion and rule of this Court when it is entirely unnecessary to do so." Joining Justice Benham are Justices Carol Hunstein and Harold Melton.

Attorneys for Appellant (Woodard): Christopher Geel, Jimmonique Rodgers, Long Dai Vo
Attorneys for Appellee (State): Robert James, District Attorney, Anna Cross, Dep. Chief Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

THE STATE V. CHULPAYEV (S14A1375)
CHULPAYEV V. THE STATE (S14X1376)

When a former confidential informant for the FBI goes on trial for the murder of an Atlanta rapper, evidence of two of his three statements to law enforcement officers will not be heard by the jury under a decision today by the Georgia Supreme Court.

The unanimous opinion, written by **Justice David Nahmias**, has upheld a **Fulton County** judge's ruling to suppress the two statements because they were "involuntary and thus inadmissible" under a Georgia statute. However, because the trial court failed to use the correct legal analysis, the high court has thrown out its refusal to suppress his third statement. It is sending the case back to the trial court to determine whether any of the man's statements violated his constitutional rights, in which case the third statement may need to be suppressed as well.

According to the facts of the case, on June 7, 2012, at about 6:30 p.m., Melvin Vernell III – an Atlanta rapper known as "Lil Phat" – was shot to death while sitting in a white Audi in the parking deck of the Northside Hospital Women's Center. Vernell was reportedly awaiting the birth of his child. Detective J.T. Williams of the Sandy Springs Police Department was lead detective in the case. Investigators learned that Vernell had rented the Audi from a car rental business owned by Mani Chulpayev. Chulpayev was notified a little before midnight about the murder. Less than an hour later, Chulpayev called Sandy Springs police, identified himself and provided information about the car. The next day, Chulpayev called FBI Special Agent Dante Jackson about the murder. Chulpayev had served as a confidential informant for the FBI and other federal agencies since 1998 and had been working with Jackson for more than three years. At the time of Vernell's murder, he was helping Jackson investigate alleged drug-related gang activity involving Decensae "Griz" White, Gary "Eldorado Red" Bradford and Vernell's father.

Chulpayev told Jackson he believed White and Bradford had killed Vernell for stealing their marijuana. Jackson instructed Chulpayev not to speak to Sandy Springs police about the case and only to discuss it with him. Several days later, Agent Jackson called Detective Williams with the Sandy Springs police and told him what Chulpayev had said about White and Bradford, explaining that the FBI was investigating them as part of an organized crime group transporting drugs from the west coast to Atlanta. Prior to the call, the Sandy Springs police believed that Vernell's murder was related to his father's rap music label dealings and contract feuds with Louisiana gangsters turned rappers. Jackson told Williams he was very protective of his informant and wary of interference by the local police. After Williams agreed not to interfere with Jackson's protection of his informant and "do nothing to put him in harm's way," Jackson told Williams that Chulpayev had been "credible and reliable" in the past, and he gave the detective permission to use the information supplied by Chulpayev to get court orders for White's and Bradford's cell phone records. The FBI and local police agreed that the FBI would continue to work the organized crime case and if they got enough evidence on the murder, the entire case would be indicted in federal court.

At issue in this case are three different statements Chulpayev made to the FBI and police. In July 2012, Chulpayev was called in to the FBI "Buckeye" office in DeKalb County. The interview lasted nearly an hour, and he was read his Miranda rights before the interview was audio taped. Jackson, another FBI agent and an Alpharetta police officer assigned to the FBI gang task force were present. Chulpayev reiterated his earlier statement to Jackson that White and Bradford had killed Vernell over marijuana. He also said that several days before the murder, White called and asked him to locate Vernell's car using the GPS tracker installed in all his rental cars. White said he just wanted to talk to Vernell, so Chulpayev tracked the car to a hotel on Peachtree Industrial Boulevard. He denied ever tracking the car to the hospital where Vernell was killed and he said he never expected White would harm Vernell. On Oct. 15, 2012, Jackson told Williams and Sandy Springs police about the July interview, including that Chulpayev had tracked Vernell's car for White. When the detectives suggested Chulpayev's actions might make him a party to the crime, Jackson told the detectives they could only charge him for "the cars." Later that day, Jackson called Williams and vowed to protect Chulpayev "at all costs." On Oct. 24, 2012, however, Jackson agreed to let Williams interview Chulpayev at the FBI office with the understanding he'd be treated as a confidential informant and used as a witness only if necessary. Jackson assured Chulpayev he had nothing to worry about, saying, "I'm the lead on the case, and as much as you do for me, you know, I will make sure nothing happens to you….I got you. Just come and do what I'm asking you to do." Chulpayev agreed, drove himself to the FBI "Buckeye" office, and was escorted to the interview room by Jackson, although Jackson did not remain in the room. Jackson did text Chulpayev during the interview, however, asking, "Are you ok?" During this second interview, which was also recorded, Williams did not read Chulpayev his Miranda rights, nor did he tell him he was suspected as a party to the murder. Williams assured Chulpayev he was "not in any trouble whatsoever," and that he was one of the "good guys." He confirmed that Jackson was "kind of the lead" of a joint operation. Chulpayev confirmed that he had given the location of Vernell's car to White.

In April 2013, based on Chulpayev's statements in the October 24, 2012 interview, the Sandy Springs police obtained search warrants for Chulpayev's house, business and car. On April 12, Chulpayev was arrested and later indicted for murder, participation in criminal street

gang activity, aggravated assault and gun charges. Four others, including White and Bradford, were also indicted. Williams told Chulpayev at the time of his arrest that Agent Jackson was "out of the picture" and no longer involved in the case. (Jackson had been reassigned following an internal investigation into allegations that Jackson had an improper relationship with Chulpayev.) Following his arrest, Chulpayev agreed to talk to Williams and was again advised of his Miranda rights. Williams explained that he was "not allowed to offer any hope or benefit" and that all he could do was tell the district attorney's office that Chulpayev had a "good heart." Chulpayev then spoke to Williams for more than three hours. The interview was videotaped. Chulpayev said again that he tracked Vernell for White but did not know that White planned to kill him. For the first time, Chulpayev also said that at some point, he'd given White the login and password to track the Audi himself.

In October 2013, Chulpayev's attorney filed a "Motion to Exclude Involuntary Statements and Confessions." At a four-day hearing on the motion, Chulpayev testified that Jackson had repeatedly expressed he intended to keep Chulpayev out of jail. Chulpayev said he'd made his statements in July and October 2012 to ensure that Jackson would be able to protect him from a murder charge. Following the hearing, the trial judge granted the motion to suppress Chulpayev's first two statements in July and October 2012 as involuntary under Georgia Code § 24-8-824, which states that, "To make a confession admissible, it shall have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury." The judge found that Agent Jackson's involvement "significantly taint[ed]" the interviews. But he denied the motion to suppress the third statement because by April 2013, Jackson was no longer involved in the case. The State appealed the judge's grant to suppress the first two statements, and in a cross-appeal, Chulpayev appealed the judge's refusal to suppress his third statement.

It has "long been understood that 'slightest hope of benefit' refers to 'promises related to reduced criminal punishment – a shorter sentence, lesser charges, or no charges at all," today's 40-page opinion says. In this case, "the record supports the conclusion that Chulpayev's statements during the first two interviews were induced by promises related to the potential criminal charges he faced, and the trial court did not err in suppressing those statements pursuant to § 24-8-824."

In his cross-appeal, Chulpayev does not argue that his April 2013 statements were involuntary under § 24-8-824 or the Constitution. Rather, he argues that what he said during the April 2013 interview must be suppressed because it was "fruit of the poisonous tree" derived from his involuntary July and October 2012 statements. Under the "fruit of the poisonous tree" doctrine, a court must suppress not only illegally acquired evidence but also evidence derived from the tainted primary evidence." But the doctrine does not apply to violations of the statute, § 24-8-824, and the trial court was correct "in ruling that Chulpayev's April 2013 statements should not be suppressed on statutory grounds." However, that does not mean the trial court reached the right result, "because Chulpayev also claimed that his July and October 2012 statements were obtained in violation of his *constitutional* rights," and the "fruit of the poisonous tree" doctrine *does* apply to constitutionally involuntary confessions.

"The trial court did not distinctly rule on Chulpayev's constitutional claim, and so we have nothing to review on that point," the opinion says. "We therefore vacate the trial court's judgment with respect to Chulpayev's April 2013 statements and remand with direction for the

court to decide whether any of his statements were obtained in violation of his constitutional rights and whether, as a result, the April 2013 statements must be suppressed."
Attorneys for State: Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Joshua Morrison, Sr. Asst. D.A.
Attorneys for Chulpayev: Tanya Miller, F. Renee Rockwell

ALLEN V. THE STATE (S14A1430)

The Supreme Court of Georgia has upheld the convictions and sentences given to a man for his role in the high-profile murder of a Morehouse College student.

In today's unanimous opinion, written by **Presiding Justice P. Harris Hines**, the high court has rejected all the arguments presented by the attorneys for Miles Jonathan Allen, who was convicted of murder for the 2006 torture death of Carlnell Walker, an athlete and student at Morehouse. Less than two weeks ago, the high court also upheld the convictions and sentences given to co-defendant Keith Jerome Roberts for his role in Walker's murder.

According to the facts of the case as presented in the briefs, Allen and Roberts also attended Morehouse where they were roommates. Roberts' younger brother later testified that for several years he, his brother and Allen were friendly with Walker and had visited his home a number of times. In July 2006, Walker's family called **Clayton County** police because they couldn't reach him and hadn't heard from him for some time. When police arrived at Walker's rental house in Riverdale, GA, they found the back door ajar and detected the stench of a dead body. Inside, blood was smeared all over the floor and walls. The power had been turned off and the inside temperature was "like an oven." Furniture was upended and the house was in disarray. A bloody hammer was found among clothes in the laundry room, clothing and credit cards were strewn about the dining room floor, and experts testified that blood patterns throughout the house suggested someone had been dragged through the house and the victim had put up a fight.

In the garage, officers found Walker's rotting body in the trunk of his car. Walker's mouth had been gagged with electrical tape and his hands were tied behind his back with cable and tape. He had been beaten and stabbed, and his front tooth had been knocked out. The medical examiner later testified Walker had been dead for at least four days. The cause of death was hyperthermia due to entrapment in a hot trunk. According to the State, the victim's injuries suggested that more than one person had been involved in the killing. The investigation led to a young man named Breylon Garland, and eventually led to Allen, Roberts, and Theodore Holliman, all of whom were eventually charged with Walker's murder.

Allen told an investigator that he and the other three had gone into Walker's home to retaliate against Walker for disrespecting Roberts by robbing him. A pair of bloody jeans found in Walker's laundry room contained the DNA of Allen. A bloody handprint found in the hallway also had been left by Allen, an expert testified. Holliman also testified that Roberts was angry at Walker for disrespecting him and believed that Walker owed him money.

Allen was tried separately and testified in his defense that he participated in the crime but only because he was coerced by Roberts who threatened him and the others that the same thing that had been done to Walker could happen to them. In August 2009, the jury convicted Allen of malice murder and multiple crimes and he was sentenced to two life terms plus 60 years in prison. He then appealed to the Georgia Supreme Court.

In his appeal, Allen's attorneys argued there were 10 errors or reasons his convictions should be reversed, but in today's opinion, the high court has rejected them all. Among his arguments, the attorneys argued that the evidence was insufficient to convict Allen of felony murder while in the commission of armed robbery. Allen was initially indicted for armed robbery, but the jury acquitted him of that charge.

"However, Allen was sentenced for malice murder, and not for felony murder while in the commission of armed robbery, and any issue with regard to that count is now moot," the opinion says. "As for the remaining charges, the evidence was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Allen was guilty of the crimes of which he was convicted."

Attorneys for Appellant (Allen): John Kraus, Stanley Schoolcraft
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., Christian Fuller, Asst. A.G.

WILLIAMS V. THE STATE (S14A1625)

The judgment of a man convicted in **Gwinnett County** of driving under the influence has been thrown out with a decision today by the Georgia Supreme Court.

Under today's unanimous opinion, written by **Presiding Justice P. Harris Hines**, the case is being sent back to the state court to determine whether the man gave "actual consent" to the procuring and testing of his blood.

According to briefs filed in the case, on Sept. 22, 2012, two witnesses called 911 after seeing a man later identified as John Cletus Williams weaving dangerously on Indian Shoals Road, crossing into the oncoming lane and running onto the shoulder. Officer Michael Murphy with the Gwinnett County Police Department responded to the calls and stopped Williams as he was pulling into his driveway. Murphy observed that Williams appeared confused and his speech was slurred. When asked, Williams denied consuming any alcohol or medications. As he got out of the vehicle, he was unsteady and leaned on his vehicle. At one point, he stumbled backwards and said he was taking medications for an equilibrium problem – Lortab and "buta-something." He also said he had a prescription for hydrocodone. Murphy asked Williams if he would submit to field sobriety tests, which he did.

Based on the tests, Murphy determined that Williams was a "less safe driver" and placed him under arrest for driving under the influence of drugs. Williams was not read his *Miranda* rights (right to remain silent, etc.), but he was read the proper notice under Georgia's Implied Consent Law. The notice states that Georgia law requires a driver who is suspected of DUI to submit to state-administered chemical tests of his "breath, blood, urine or other bodily substances." The notice informs him that if he refuses the testing, his privilege to drive will be suspended for a year, and his refusal may be introduced against him at trial. The officer did not ask Williams if he "was willing to freely and voluntarily give a test," but merely read Williams the notice and told him it was "a yes or no question." Williams responded, "Yes." He was then transported to the Gwinnett County Medical Center where his blood was tested. No search warrant was obtained. According to the briefs, the toxicology report revealed the presence of alprazolam, commonly known as Xanax, a sedative, in concentrations two and a half times the normal therapeutic range. In addition, the tests revealed the barbiturate, butalbitol, and the

narcotic analgesic, oxycodone. At trial, Williams' wife testified that her husband had recently had surgery and was taking pain medication. She said he also suffered from migraine headaches for which he took medication.

Ultimately, Williams was formally charged in Gwinnett County State Court both with Failure to Maintain Lane and DUI. Prior to trial, his attorney filed a motion to suppress the blood test results, alleging that the use of the Implied Consent Law violated his right against unlawful search and seizure under both the U.S. and Georgia constitutions. After hearing the evidence, the trial court denied Williams' motion and the case proceeded to a "bench trial" – before the judge with no jury. The judge found Williams guilty of both charges and he was sentenced to 30 days in jail followed by two years on probation, as well as community service, substance abuse treatment and a $1,500 fine. Williams then appealed to the state Supreme Court.

In today's opinion, the high court states that in denying Williams' motion to suppress his blood test, the "state court's analysis is flawed."

"A suspect's right under the Fourth Amendment to be free of unreasonable searches and seizures applies to the compelled withdrawal of blood, and the extraction of blood is a search within the meaning of the Georgia Constitution," the opinion says. "In general, searches are of two types: those conducted with a search warrant or those undertaken without one, and searches conducted outside the judicial process are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions."

One exception to the requirement to obtain a warrant is the presence of "exigent circumstances," or urgent circumstances that require an officer to take immediate action without a warrant.

"In the present case, there is no dispute that there were no exigent circumstances," the opinion says. "Consequently, the analysis in this case must then focus on the voluntary consent exception to the warrant requirement because it is well settled in the context of a DUI blood draw that a valid consent to a search eliminates the need for…a search warrant."

In its 2003 decision in *Cooper v. State,* the Georgia Supreme Court "distinguished compliance with the implied consent statute from the constitutional question of whether a suspect gave *actual consent* for the state-administered testing." The high court emphasized that when relying on the consent exception to the warrant requirement, "The State has the burden of proving that the accused acted freely and voluntarily under the totality of the circumstances."

"In considering Williams' motion to suppress, the state court failed to address whether Williams gave *actual consent* to the procuring and testing of his blood, which would require the determination of the voluntariness of the consent under the totality of the circumstances," the opinion says. "Consequently, the judgments of the state court are vacated and the case is remanded to that court for proceedings consistent with this opinion."

Attorney for Appellant (Williams): Lance Tyler

Attorneys for Appellee (State): Rosanna Szabo, Solicitor-General, Joelle Nazaire, Asst. S.G., Shane McKeen, Asst. S.G

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

* Ricardo Daughtry (Screven Co.)
* Michael Favors (Fulton Co.)

DAUGHTRY V. THE STATE (S14A1840)
FAVORS V. THE STATE (S14A1797)

(While the Supreme Court has upheld Favors' malice murder conviction and life prison sentence, it is sending the case back to the trial court for resentencing as the trial court erred in "merging" rather than "vacating" some of the convictions for sentencing purposes. It also improperly merged the burglary verdict into the malice murder verdict when each crime requires proof of an element that the other does not. Therefore, the trial court still needs to impose a sentence on the burglary conviction.)