Supreme Court of Georgia
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SUMMARIES OF OPINIONS

Published Monday, February 16, 2015

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CORVI V. THE STATE (S14A1705)

The Supreme Court of Georgia has reversed the convictions for child cruelty a Uruguayan woman received after two little girls in her care, including the woman's granddaughter, drowned in a family pool.

In 2013, a **Paulding County** jury convicted Marta Sonia Corvi of two counts of cruelty to children in the second degree and two counts of reckless conduct for the drowning deaths of Corvi's granddaughter, Mia Penoyer, and Sophia Juarez. Both girls were 5 years old. Corvi was deported as a result of the convictions.

But in today's unanimous opinion, **Justice Robert Benham** writes that the "evidence was insufficient to convict," and the trial judge erred by failing to grant Corvi's motion for a directed verdict in her favor and for rejecting her motion for a new trial.

"The factual circumstances of this case, even when viewed in a light most favorable to the verdict, do not show [Corvi's] conduct constituted criminal negligence that would sustain charges of cruelty to children in the second degree and reckless conduct," the opinion says.

According to the facts of the case, in 2012, Eduardo and Sandra Juarez were living in Paulding County with their three children, Nahuel, 13, Maximo, 10, and Sophia, 5. For seven years, Corvi had performed seasonal work by cleaning dormitories for the Juarez family business. In 2012, however, there was not enough work to keep her on, but the Juarez's agreed to let Corvi live with them until the business picked back up. In exchange, she helped around the house by cleaning, doing laundry, helping cook, and watching the children. On June 10, Corvi's granddaughter, Mia, was at the Suarez house playing with Sophia. When Mia and

Sophia asked if they could swim out back in the family pool, Corvi and the Juarez parents said no. Around noon, Sandra and Eduardo Juarez left to go Sam's Club to get food for a cookout. Their 10-year-old went with them, but they left the other children –Nahuel, Sophia and Mia – with Corvi. After they left, Corvi sent the girls upstairs to play dress-up while she washed the hardwood floors on the main level, opening the door to the back deck to clear the house of the strong smell of the soap. Corvi had diabetes, and when she started feeling dizzy, she mentioned to Nahuel that she was going down to the basement to take her diabetes medication. She told the 13-year-old to stay in his room, which overlooked the main floor, while she was in the basement. He went back to his room, put on his headphones to listen to music and fell asleep. He did not notice when Sophia and Mia, who had been instructed not to go swimming, walked past his room on their way to the pool. Corvi meanwhile continued cleaning and at some point, made a personal phone call which a detective later testified lasted more than 45 minutes. When the Juarez's returned with the groceries, they asked Corvi where the girls were, and she said they were upstairs playing. Eventually, 10-year-old Maximo found his sister Sophia, floating face down in the pool; Mia was on the bottom. Maximo screamed for his parents and tried to pull Sophia out of the pool. His father helped pull Sophia out, then dove in to get Mia. The parents tried resuscitating the girls then frantically rushed them to the hospital. An ambulance met them on the way and took over the resuscitation, but at the hospital, the girls were pronounced dead. Shortly after, police spoke to Corvi, describing her as "devastated," according to court testimony.

Corvi was indicted by a Paulding County grand jury for two counts of cruelty to children in the second degree under Georgia Code § 16-5-70 and two counts of reckless conduct under § 16-5-60. The indictment read that Corvi was charged with child cruelty because she "did cause Mia Penoyer a child under the age of 18 years, cruel and excessive physical pain by failing to reasonably supervise said child who drowned while under the care and control of the accused in violation of § 16-5-70." There was an identical count regarding Sophia Juarez. The indictment further stated Corvi was accused of reckless conduct because she "unlawfully did endanger the bodily safety of Mia Penoyer [and Sophia] by consciously disregarding the substantial and unjustifiable risk that her omission and failure to reasonably supervise Mia Penoyer…would cause harm to and endanger the safety of said child and the disregard constituted a gross deviation from the standard of care which a reasonable person would exercise in the situation in violation of § 16-5-60." Corvi's attorney filed a motion to "quash," or throw out, the indictment, arguing it was legally void based on its vagueness. In his motion, Corvi's attorney argued that the language, "failure to reasonably supervise," is neither criminalized nor defined in the Georgia statute. The trial court denied the motion, finding that Corvi had fair notice that her conduct was outlawed under the statutes. Corvi was subsequently convicted and sentenced to 20 years, with one year to be spent in jail and the remainder on probation, minus the year and a half she had already spent in jail. She was deported as a result of her convictions, and her attorney appealed to the state Supreme Court.

Today's opinion points out that both cruelty to children in the second degree and reckless conduct are crimes involving criminal negligence. Criminal negligence is defined by Georgia law as "an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby."

"In this case, the State did not meet its burden of showing [Corvi's] conduct while the

children were under her supervision was so willful, wanton or reckless as to constitute criminal negligence supporting the crimes alleged in the indictment," today's opinion says.

The lead investigator in the case testified he decided to swear out a warrant for Corvi's arrest when he learned she'd been on the phone for 45 minutes. "Yet there was no evidence showing that the length of time appellant was on her phone call would have made a difference in the children's deaths," the opinion says. There was no evidence of when the children left the upstairs bedroom or how long they had been in the pool when found. "Thus, it cannot be said that taking a 45-phone call in itself constituted a failure to reasonably supervise the children."

"Also, this is not a case where a caretaker left small children unattended in a pool or a similar objectively dangerous circumstance," today's opinion says. Here, Corvi never left the children alone in the house, she had told the girls they could not go swimming, and there was no evidence they had a propensity to disobey her or other adults.

"Judgment reversed," the opinion says.

Attorney for Appellant (Corvi): Andrew Fleischman
Attorneys for Appellee (State): Donald Donovan, District Attorney, Thomas Lyles, Sr. Asst. D.A.

BUN V. THE STATE (S14A1703)

A young man who was 17 when he shot and killed a **Clayton County** sheriff's deputy will spend the rest of his days in prison under a decision today by the Georgia Supreme Court.

In a 5-to-2 ruling, the majority finds that the sentence of life in prison with no chance of parole given to Veasa Johnathan Bun for the murder of Sheriff's Deputy Richard Daly does not constitute "cruel and unusual punishment" under the U.S. or Georgia constitutions.

Other courts around the country have concluded that recent U.S. Supreme Court decisions "do not stand for or demand the conclusion that a sentencing court is categorically barred from sentencing juveniles in a homicide case to life imprisonment without the possibility of parole," **Chief Justice Hugh Thompson** writes for the majority.

According to the facts of the case, on July 20, 2011, Daly pulled over a Honda Civic in which 17-year-old Bun was a passenger. A warrant for Bun's arrest had been issued in connection with a January 2011 robbery and aggravated assault, and on the day of the shooting, undercover fugitive officers had spotted Bun inside the car. They asked Daly and another deputy, both of whom were in uniform and in marked cars, to stop the Honda. Daly arrived first and stopped the car. As the driver pulled over, Bun reached for a gun and cocked it, prompting the driver of the car to warn Bun not to do anything "stupid." When the other deputy arrived, he saw that Daly was already approaching on foot the passenger's side of the stopped car. When Daly reached the Honda, Bun got out and fatally shot Daly twice in the abdomen. Daly, who had never drawn his weapon, fell. The other deputy shot at Bun, but he ran into nearby woods. He was apprehended later that day.

In May 2012, a jury convicted Bun of murder, aggravated assault, obstructing a police officer, and other crimes. He was sentenced to life without parole plus 70 additional years in prison. Prior to sentencing, Bun's attorney filed a motion to declare the imposition of a sentence to life without parole unconstitutional because of his status as a juvenile offender. The judge denied the motion. At Bun's sentencing hearing, Tracy Graham-Lawson, the Clayton County District Attorney who had recused herself from prosecuting Bun's case, testified against Bun

without objection from Bun's attorney. Lawson, a former juvenile court judge, had presided over a number of Bun's juvenile cases. She testified that Bun began his "criminal career" at age 10 and she had detained him at 13 because she was afraid of him. She called him a "menace to society" who could not be rehabilitated, and she urged that Bun be sentenced to life without parole.

In today's opinion, the majority cites three opinions by the U.S. Supreme Court that have altered juvenile law. In 2005, the Supreme Court ruled in *Roper v. Simmons* that the Eighth Amendment of the Constitution bars states from sentencing juveniles to death, noting that the "instability and emotional imbalance of young people may often be a factor in the crime." Five years later, the high court ruled in *Graham v. Florida* that a sentence of life without parole for a *non-homicidal* offense was unconstitutional, reasoning that a juvenile's diminished culpability lessens the justification for harsh sentencing schemes. And in 2012, the Supreme Court ruled in *Miller v. Alabama* that states could not require a *mandatory* sentence of life without parole in juvenile homicide cases. However, the high court emphasized in *Miller* that it was not creating a categorical bar prohibiting a sentence of life without parole in juvenile homicide cases and was not foreclosing "a sentencer's ability to make that judgment in homicide cases."

In today's Georgia Supreme Court opinion, the majority states that in 2014, it ruled in *Foster v. State* that Georgia statutory law "does not under any circumstance *mandate* life without parole but gives the sentencing court discretion over the sentence to be imposed after consideration of all the circumstances in a given case, including the age of the offender and the mitigating qualities that accompany youth." "We, therefore, reject Bun's invitation to extend the holdings of *Roper, Graham,* and *Miller* and affirm the trial court's denial of his motion for new trial on this ground," the majority opinion says. The majority also rejects Bun's argument that he is entitled to a new trial because his trial attorney rendered "ineffective assistance of counsel" by failing to object to the testimony of Graham-Lawson. "Bun's reliance on the Code of Judicial Conduct as the ground for exclusion of Lawson's testimony is misplaced," the majority says, adding that "the Code did not apply to Lawson because she was not a judge or judicial candidate at the time her testimony was given."

In the dissent, **Justice Robert Benham** writes that "because I believe it constitutes cruel and unusual punishment under our state constitution to impose the sentence of life without parole on a juvenile offender who commits homicide, I cannot join the majority opinion." Citing *Roper, Graham* and *Miller,* he writes that the "appropriate punishment for juvenile offenders has been an evolving area of the law for the past decade," and all three decisions by the U.S. Supreme Court are "predicated on the fact that juveniles, who are biologically and emotionally immature, are less culpable than adults for their actions."

"In Georgia, we treat juveniles differently than adults as evidenced by our institutions (i.e. juvenile courts) and laws," says the dissent, joined by Justice Carol Hunstein. "As a state constitutional matter, we give up nothing by leaving open for juvenile offenders the possibility of rehabilitation and redemption for crimes they commit when they are biologically and emotionally immature. Indeed, life with the possibility of parole is not a 'light' sentence for a juvenile offender," who would still have to spend 30 years behind bars before becoming eligible for parole. "Imposing such exorbitant sentences on juvenile offenders means we have given up all hope for their rehabilitation."

Justice Benham also writes that the testimony of Graham-Lawson "is deeply troubling whether or not an ethical violation occurred regarding her former status as a juvenile court judge for Clayton County."

"Whether or not allowing Lawson to testify was a technical violation of judicial ethics, her testimony certainly had the appearance of impropriety inasmuch as Lawson was given a platform, under the guise of her professional status as a former juvenile court judge, to give her personal opinions about Bun while simultaneously admitting she could not be impartial where Bun was concerned," the dissent says. "I believe the fact that counsel made no effort to prohibit Lawson from testifying rose to the level of constitutionally ineffective assistance such that Bun is entitled to relief."

Attorney for Appellant (Bun): Christopher Geel
Attorneys for Appellee (State): Tracy Graham Lawson, District Attorney, Elizabeth Baker, Dep. Chief Asst. D.A., Erman Tanjuantco, Dep. Chief Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Katherine Iannuzzi, Asst. A.G.

SALES V. THE STATE (S14A1478)

A man convicted of murder and sentenced to life in prison will get a new trial under a decision today by the Georgia Supreme Court.

In 2006, a **Taylor County** jury found Courtney Sales guilty of murder and armed robbery for the shooting death of Jamal Cooper.

But in today's decision, written by **Chief Justice Hugh Thompson**, the high court has reversed the judgment based on the trial judge's statement during jury selection that the crime "happened in Taylor County."

With that statement, the trial judge "expressed or intimated the court's opinion as to a disputed issue of fact" and therefore violated Georgia Code § 17-8-57, the opinion says. "Accordingly, appellant must be granted a new trial."

According to the facts of the case, in December 2005, Sales and Cooper drove from New Jersey to Americus, GA to purchase cheap firearms. Sales arranged through an acquaintance to purchase the guns from someone named "Sham." On Dec. 17, 2005, Sales, Cooper, the acquaintance and three of his cousins went to a meeting place on a dirt road, but "Sham" never arrived. Later that night, police found Sales lying on the ground at a gas station. He'd been shot multiple times. Sales told police he'd been involved in a transaction that went wrong and that his friend, Cooper, had also been shot. Based on Sales' account, there was some confusion as to which county Cooper's body could be found. Later, police found the body on a dirt road in south Taylor County.

Police eventually learned through witnesses that Sales had made the trip from New Jersey to rob Cooper, believing that Cooper had previously ripped him off in another transaction. Police also learned that Sales was the one who had shot Cooper in the back of the head, then had another member from the group shoot him to make it look as if he were the victim. Eventually, the other individuals involved entered into plea deals and testified against Sales at trial.

Following a November 2006 trial, the jury found Sales guilty of murder, armed robbery and possession of a firearm during the commission of a crime, and he was sentenced to life plus five years in prison. Sales filed a motion requesting a new trial challenging the sufficiency of the evidence against him and arguing the trial judge violated § 17-8-57 by making three improper

comments during the trial. The trial judge denied his motion, and Sales then appealed to the state Supreme Court.

In today's opinion, the high court concludes that "the evidence was sufficient to enable a rational trier of fact to find appellant guilty beyond a reasonable doubt of the crime for which he was convicted."

However, by stating that the crime was committed in Taylor County, when that was a disputed fact, the judge violated the law, the high court concludes.

In every criminal case, venue – or where the crime was committed – must be proven by the prosecution beyond a reasonable doubt. Georgia Code § 17-8-57 states: "It is error for any judge in any criminal case, during its progress or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused."

"In a case with facts virtually identical to those presented here, this Court recently observed: '[W]hen…a trial judge makes a statement to jurors, however inadvertent or unintentional, informing them that a crime occurred in a particular county, i.e., a particular venue, the making of the statement violates § 17-8-57 because it could be construed as a comment regarding a required element of the State's case."

"Based on our review of the record, we agree that by stating to the venire in reference to the crimes committed that, 'This happened in Taylor County,' the trial court expressed or intimated its opinion as to a disputed issue of fact at trial and violated § 17-8-57," today's opinion says. "Judgment reversed." All the Justices concur, except Justices Nahmias and Blackwell who concur in judgment only.

Attorney for Appellant (Sales): Tyler Conklin, James Bonner

Attorneys for Appellee (State): Julia Slater, District Attorney, Robert Bickerstaff, II, Sr. Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Christian Fuller, Asst. A.G.

SPEARS V. THE STATE (S14P1344)

The Supreme Court of Georgia has upheld the death sentence given to Steven Frederick Spears in **Lumpkin County** for strangling to death his former girlfriend, Sherri Holland.

In today's unanimous opinion, **Justice Keith Blackwell** writes for the court that the evidence presented at trial "was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Spears was guilty of the crimes of which he was convicted."

At the same time, the high court has thrown out the trial court's decision to merge the two burglary counts into one for sentencing purposes, finding that the two charges related to two separate crimes, not just one. It is sending that issue back to the trial court with directions to enter a sentence on the burglary count for which Spears has not yet been sentenced.

According to the facts of the case, Spears and Holland had dated but their romantic relationship had ended when, on Aug. 24, 2001, Holland's 13-year-old son left her home to spend the weekend with his father. Her family members became concerned, however, when she failed to pick up her son as expected at the end of his stay. On Aug. 26, after trying several times to reach her by telephone, Holland's ex-husband and son drove to her house. When they didn't see her car, they left, wondering if she was just running late. Eventually, her ex-husband called police. When officers entered Holland's home, they detected a strong odor of decaying flesh coming from the master bedroom, which was locked with a padlock. After removing the door

hinges, police found Holland's decomposing body lying face down on the floor with her head on a pillow. A black garbage bag was secured around her head with duct tape. Duct tape also covered her mouth and was wrapped around her face, hands and feet. Items were scattered about the bedroom, indicating there had been a struggle. The room was very hot, as the air conditioner had been set at 85 degrees.

The medical examiner testified Holland died from asphyxia consistent with having been strangled. She also had a hemorrhage on the surface of her skull, suggesting she'd been struck with a fist, and she had numerous abrasions on her knee and chin consistent with a struggle. The medical examiner testified that the plastic garbage bag and duct tape across her mouth may have cut off oxygen and contributed to her death. Following the discovery of her body, police issued an alert for her missing 2001 red Camaro with black stripes, which was found two days later at Belton Bridge Park in Hall County, about 25 miles from her home. Inside was a K-Mart receipt showing that a fishing license, red spray paint, a ball cap and fishing gear had been purchased in Cornelia, GA the morning of Aug. 25. An investigation revealed that Spears had purchased the items.

On Sept. 5, 2001, a Lumpkin County officer found a disheveled Spears walking down Highway 52 near the county line. The officer later testified the man matched the description of the man wanted for Holland's murder, so he stopped and arrested him. The officer did not read him his Miranda rights before transporting him back to the Sheriff's Office, but en route Spears made several statements, telling the officer he knew a warrant had probably been issued for his arrest and he was walking to a nearby store to call police so he could turn himself in. He said he'd been living in the woods the past 10 days in a deer stand in Lula, GA, and he believed police officers dressed in camouflage had chased him through the woods.

At the Lumpkin County Sheriff's Office, Spears was read his Miranda rights, but he waived them and confessed he had murdered Holland. He said they had dated about three years and broken up several months earlier. He said he thought she was seeing someone else and he had once threatened her, "if I caught her or found out she was screwin' somebody else, I'd choke her ass to death." Spears confessed he had developed four separate plans for murdering Holland. One involved electrocuting her while she was in the shower. Spears explained that he went under the crawl space, placed screws in the shower's pipes, and planned to connect them to the home's circuit breaker. The second plan involved beating her with a homemade bat he'd carved from a tree and hidden in a canoe at her home. The third involved shooting her with her shotgun, which he'd secretly loaded the Friday night before the murder. And the fourth plan, the one he actually followed, was to strangle her. He said the night before he murdered Holland, he broke into her home through a vent area in the basement crawl space, then hid in her son's bedroom closet and waited more than four hours for her to return home and fall asleep. At about 2:30 a.m., he went into her bedroom and told her to roll over. A struggle ensued into the hallway where he strangled her for five to 10 minutes. He said that before Holland lost consciousness, she told him she loved him; he told her he loved her, then "choked her out." He then dragged her back into the bedroom, taped her hands, feet and mouth, secured the garbage bag over her head with duct tape, and put her head on a pillow. He said he stole her car, purse and money, then drove to Cornelia where he bought supplies, including red spray paint to cover the distinctive black stripes of her Camaro. At one point, after realizing he had forgotten to take her cigarette case, knowing that's where she kept her money, he returned to her house and retrieved it. He said he eventually abandoned the

car at Belton Bridge Park because he feared it was equipped with an anti-theft device. At the end of his confession, Spears stated to police that, "if I had to do it again, I'd do it."

Spears was indicted for murder, aggravated assault, kidnapping with bodily injury and two counts of burglary. The State announced it would seek the death penalty. In March 2007, a jury found Spears guilty as charged. After finding the existence of two aggravating circumstances, the jury recommended the death sentence, which is what the judge ordered. The trial court later denied Spears' motion requesting a new trial, but it set aside his kidnapping conviction, as well as the aggravating circumstance involving kidnapping.

In their appeal before the state Supreme Court, Spears' attorneys argued the trial court made 11 errors. But in today's 40-page opinion, the high court has refused to grant a new trial based on any of them. However, the high court has determined on its own that the trial court erroneously merged the two convictions for burglary – one that was based on the intent to commit murder and one that was based on the intent to commit a theft.

Today's opinion points out the evidence shows that Spears made his initial entry into Holland's house with the dual intent to commit a theft and murder. But he then left the house and later returned and entered the house a second time to steal her cigarette case and money. "Under the facts of this case, Spears's two separate entries into the house constituted two separate violations of the burglary statute," the opinion says. "Therefore, the trial court erred by merging the burglary counts in its sentencing order, the erroneous merger must be vacated, and the trial court is directed to enter a sentence on the second of those burglary counts."

In today's opinion, the state Supreme Court also addresses Spears' claim that the prosecutor made improper statements at the conclusion of the sentencing phase. Regarding one, the Supreme Court finds the prosecutor improperly personalized the sentencing question before the jury by arguing, "If he ever escaped, it could be you." However, Spears' attorney did not object at trial, and he is prohibited from arguing for the first time on appeal that the prosecutor's statement contributed to his conviction. Nevertheless, the high court concludes that the absence of the prosecutor's improper statement "would not in reasonable probability have changed the jury's sentencing verdict." The high court also finds that the prosecutor's reference to Spears as a "rabid animal" was "unnecessary and undesirable." Again, Spears' attorney did not object and even if he had, it would not be grounds for reversal, the opinion says. "Although we have characterized arguments using metaphors for a defendant such as 'animal' and 'snake' as 'unnecessary and undesirable,' we have held that allowing them is not reversible error."
Attorneys for Appellant (Spears): Mitch Durham, Lawrence Stockton, Jr.
Attorneys for Appellee (State): Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Sabrina Graham, Sr. Asst. A.G., Dana Weinberger, Asst. A.G.

CITY OF ATLANTA ET AL. V. MITCHAM (S14G0619)

The Supreme Court of Georgia has reversed an opinion by the Georgia Court of Appeals, and ruled that the City of Atlanta and its chief of police are immune from the lawsuit of an inmate who claimed he was injured while incarcerated due to their failure to provide him adequate medical care.

"Because we find that the care of inmates in the custody of a municipal corporation is a governmental function for which sovereign immunity has not been waived, we reverse," **Chief Justice Hugh Thompson** writes in today's opinion.

According to the facts of the case, in October 2010, Barto Mitcham was arrested and charged with "hit and run." While in the custody of the Atlanta Police Department, Mitcham allegedly became ill and was taken to Grady Memorial Hospital where he was treated for low blood sugar associated with diabetes, resulting in a serious condition called diabetic ketoacidosis. After monitoring Mitcham for two days, Grady released him back into the police department's custody and he was transported back to the City of Atlanta jail. The hospital informed officers of the need to monitor Mitcham's blood sugar levels and provide him with insulin on a regular schedule. A few days later, Mitcham became ill again and was returned to the hospital where he remained for several days due to diabetic ketoacidosis.

Mitcham sued the City and Police Chief George Turner in **Fulton County** State Court, claiming they were negligent for failing to properly monitor his insulin levels while he was in custody. The City and police chief filed a motion asking the court to dismiss the case on the ground that they were protected by sovereign immunity. The trial court denied the motion, the City appealed, and the Georgia Court of Appeals upheld the trial court's refusal to dismiss the case. The City and police chief then appealed to the State Supreme Court, which now reverses the Court of Appeals decision.

At issue in this case is whether providing medical services to an inmate is a "governmental" function of the City or a "ministerial" duty under the law. A governmental function has been defined as one which "involves the exercise of deliberate judgment and wide discretion." Governmental functions have also been called "legislative or judicial powers." By contrast, a ministerial function has been defined as one that is "simple, absolute, and definite" and "requiring merely the execution of a specific duty."

In its decision, the Court of Appeals held that "the provision of medical care to inmates in the City's and Turner's custody was a ministerial act and, because it was a ministerial act, sovereign immunity was waived pursuant to Official Code of Georgia § 36-33-1 (b)."

But the Court of Appeals' analysis "reflects a confusion regarding the separate doctrines of sovereign and official immunity and the substantive differences between the ministerial functions performed by a government body and the ministerial acts of an individual," today's opinion says.

Georgia Code § 36-33-1, which addresses the liability of municipalities, states: "Municipal corporations shall not be liable for failure to perform or for errors in performing their legislative or judicial powers. For neglect to perform or improper or unskillful performance of their ministerial duties, they shall be liable."

"This provision has for more than a century been interpreted to mean that municipal corporations are immune from liability for acts taken in performance of a governmental function but may be liable for the negligent performance of their ministerial duties," today's opinion says.

And as far back as 1895, Georgia's courts "have had no difficulty concluding that the operation of a jail and the care and treatment of individuals in police custody are purely governmental functions related to the governmental duty to ensure public safety and maintain order for the benefit of all citizens."

"We find this precedent binding and reaffirm that when a municipal corporation, through the exercise of its governmental power, provides or fails to provide medical treatment to an inmate in its custody, it is performing a governmental function for which its sovereign immunity has not been waived by the enactment of § 36-33-1 (b)," the opinion says.

"Because there has been no waiver of the City's sovereign immunity in this case, Mitcham is precluded from pursuing his negligence claims against both the City and Turner in his official capacity," today's opinion says. "Accordingly, the decision of the Court of Appeals affirming the trial court's denial of appellants' motion to dismiss is reversed."
Attorneys for Appellants (City): Cathy Hampton, Laura Burton
Attorney for Appellee (Mitcham): Charles McAleer

PRIMAS V. CITY OF MILLEDGEVILLE (S14G0753)

In another case involving the issue of sovereign versus official immunity, the Georgia Supreme Court has thrown out a decision by the Georgia Court of Appeals, which ruled that the City of Milledgeville was protected by sovereign immunity from a man's lawsuit over injuries he received driving a city-owned vehicle.

In today's opinion, **Chief Justice Hugh Thompson** writes the Court of Appeals decision was "flawed" because the appellate court addressed the immunity issue before it as one involving *official* immunity rather than *sovereign* immunity.

"In doing so, the Court of Appeals applied inapplicable legal principles, definitions, and precedent and failed to make any determination regarding whether the alleged negligence arose out of the performance, or non-performance, of a governmental function," the opinion says.

In this case, the City of Milledgeville in **Baldwin County** had a contract with the Georgia Department of Corrections, under which the City provided vehicles for corrections officers to transport prison inmates who performed labor for the City, such as cutting grass. The City was responsible for maintaining the vehicles in working order.

On Oct. 10, 2007, corrections officer Lucious Primas, Jr. was driving a prison van with a five-person prisoner work crew back to the prison when the brakes suddenly failed. Unable to stop and concerned he was about to run a red light, Primas drove the bus off the road and into a utility pole. Although the bus suffered only minor damage, Primas allegedly suffered neck and shoulder injuries. An inspection of the bus after the crash revealed that the front brake line had burst, causing the power assist to the front brakes to fail.

Primas sued the City for negligence, alleging that it had failed to adequately inspect the bus and maintain the brake lines. He claimed that an adequate inspection would have shown a problem with the brake line. In response, the City filed a motion for "summary judgment," asking the court to rule in its favor because it was protected by sovereign immunity. (A trial court grants summary judgment when the judge determines there is no need for a jury trial because the facts of the case are undisputed and the law falls squarely on the side of one of the parties.) In this case, the judge denied the City's motion. The City then appealed to the Court of Appeals, which reversed the trial court's ruling, finding the City was immune from the lawsuit because the claim against it was over the alleged negligent performance of a "discretionary act." Primas then appealed to the state Supreme Court.

"Because the Court of Appeals' opinion in this case, like the trial court's ruling on the City's motion for summary judgment, gives no consideration to whether the alleged negligence by the City occurred in the performance of a government function and does not acknowledge or apply the definitions of governmental and ministerial functions as those terms relate to the City's *sovereign* immunity, we vacate the judgment of the Court of Appeals and remand to that court for its reconsideration in light of this opinion and our decision today in *City of Atlanta v.*

Mitcham," the opinion says.
Attorneys for Appellant (Primas): James Lee, II, Michael Barber
Attorney for Appellee (City): E. Alan Miller

KOSTURI V. THE STATE (S14A1359)

In this high-profile **Clayton County** case, the Georgia Supreme Court has upheld the murder conviction and life prison sentence given to Kevin Kosturi, who was 15 years old when he shot and killed his former girlfriend, 16-year-old Angel Hope Freeman.

Kosturi's attorney argued in his appeal that the evidence presented at trial was legally insufficient to convict him. But in today's unanimous decision, **Justice David Nahmias** writes that the evidence "was sufficient to reject [Kosturi's] accident defense and find him guilty beyond a reasonable doubt" of the crimes of which he was convicted.

According to the facts of the case, Kevin and Angel began dating in the fall of 2010. The relationship was tumultuous and the teenagers had numerous arguments and breakups, often stemming from Kevin's jealousy of Angel's male friends. He did not want her to spend time with other boys. On one occasion, witnesses saw the two arguing at their lockers. When Angel left, the witnesses said they heard Kevin mutter, "I'm going to kill her," as he walked away. Another time, Kevin told a friend during class that Angel was planning to leave him, and he promised, "If I can't have her, no one can." On Valentine's Day, 2011, Angel's former boyfriend sent her a text message, which she mentioned to Kevin. This led to another argument and breakup. After that, one of Angel's friends later testified, Angel became concerned that Kevin "just wasn't the same and that something had changed in him."

A few days later, on Feb. 20, 2011, Kevin's 21-year-old neighbor, Robert Bethune, gave Kevin a loaded .38-caliber revolver after he had overheard Kevin trying to purchase a gun. That night, Kevin texted Angel, telling her he had a gun and was thinking of killing himself. Angel told Kevin she loved him and agreed to meet him at his home the next day. When she met him the next afternoon at the trailer where he lived, he led her into the woods behind the trailer park where he had put the gun in a small wooden shack. Kevin then shot Angel in the chest, killing her with a shot through her heart. At some point, Kevin then called 911. When police arrived, Angel was lying on her back in the shack. When officers first interviewed Kevin at the scene, he told them a Mexican man had shot Angel from approximately 40 yards away through the trees. But they determined that such a shot would have been nearly impossible, and they noted that Angel's wounds suggested she had been shot at close range. The officers then took Kevin to police headquarters to interview him further. His mother arrived soon after. Kevin was informed of his *Miranda* rights, which he waived, and his mother was present for the remainder of the interview. After the investigators told Kevin that stippling around the entrance wound indicated that Angel had been shot at close range, he changed his story, claiming she had shot herself and he had thrown the gun into the lake nearby because he "didn't want anyone to think she was a bad person." Police recovered the gun the next day, after he showed them where he had thrown it. During a later interview, after investigators told him they did not believe Angel had shot herself, Kevin again changed his story, claiming he had accidentally shot her while playing with the gun.

At trial, his attorney relied on the defense that the shooting had been an accident. Kevin did not testify. The State's firearms expert testified that the revolver used to shoot Angel would

have required about 11 and a half pounds of pressure if the hammer had not been cocked, but if it had been cocked – as in an intentional shooting – the force necessary only would have been 2 and a half pounds of pressure. On cross examination, Kevin's firearms expert conceded that, "If somebody pulls the hammer back, he's about to shoot."

In today's opinion, the high court points out that under Georgia Code § 16-2-2, a person "shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, intention, or criminal negligence." Kevin's attorney argued at trial that the evidence was legally insufficient to support his convictions because no evidence established a "criminal scheme or undertaking," nor did the evidence overcome the defense theory that Kevin lacked intent to commit the crimes.

"As we have often explained, however, '[i]t was for the jury to determine the credibility of the witnesses and to resolve any conflicts or inconsistencies in the evidence,'" today's opinion says. "Appellant's challenge to his convictions is therefore without merit. Judgment affirmed."

Attorney for Appellant (Kosturi): Charles Evans

Attorneys for Appellee (State): Tracy Graham Lawson, District Attorney, Bill Dixon, Dep. Chief Asst. D.A., Elizabeth Baker, 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.

IN THE MATTER OF JOHN FLOYD WOODHAM (S14Y0700)

In this lawyer discipline case, the Georgia Supreme Court has dismissed the formal complaint filed by the State Bar of Georgia against Atlanta attorney John Woodham.

In a 5-to-2 decision, the majority states that the evidence does not prove Woodham violated Rule 8.4 (a) (4) of the Georgia Rules of Professional Conduct, which prohibits "professional conduct involving dishonesty, fraud, deceit or misrepresentation," when he suggested to developers that he would dismiss his challenges to bond validation proceedings if they paid him 1 percent of the bond issuance – or $1.3 million.

The Bar also failed to prove Rule 4.2 (a), which states that "a lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter."

"The State Bar having failed to prove the alleged violations on which it elected to proceed to hearing, these disciplinary proceedings are dismissed," today's majority opinion says.

According to the facts, as laid out in today's 19-page opinion, in October 2008, Fulton County District Attorney Paul Howard filed two bond validation proceedings in superior court to validate the issuance of bonds by the Atlanta Development Authority for the benefit of 13th Street Holdings, LLC and Mezzo Development, LLC. The first proceeding involved $70 million in bonds for a project by 13th Street Holdings and the second involved $60 million for a project by Mezzo Development. Both development companies are managed by Tivoli Properties, Inc., whose CEO is Scott Leventhal, the person who brought the complaint against Woodham to the State Bar.

In November 2008, Woodham intervened in the case and filed complaints in superior court on behalf of himself and Citizens for Ethics in Government, objecting to the issuance of the bonds. Two days later, he phoned Tivoli Properties and asked to speak to the company's in-house counsel, although according to the State Bar, Woodham knew the developers were being represented by outside counsel in the bond proceedings. Leventhal returned his call, and

Woodham told him he was not prepared to discuss why he was calling without the participation of the developers' lawyer. Subsequently a conference call was arranged involving Woodham, Leventhal, and Patricia Roy, who was one of the developers' lawyers. Woodham recommended that no one record the conversation which would remain confidential, and Roy agreed. Subsequently, the phone call was set up. Leventhal began recording the conversation shortly after it began.

Woodham told Leventhal and Roy he believed the bond transactions were illegal. However, he said he would dismiss the complaints if the developers paid him and Citizens for Ethics in Government 1 percent of the bond issuance, or $1.3 million. Leventhal said he would get back to him about the offer, but never did.

In today's opinion, the majority agrees with the dissent that Woodham's conduct was "egregious, improper and appalling." "We too are troubled by the conduct proved in the record," says the unnamed majority opinion. However, the majority offers no opinion about whether that conduct might have violated Rules 3.1 or 3.5 (c), "insofar as the State Bar has abandoned its charges of such violations." (Rule 3.1 prohibits a lawyer from filing suit or taking "other action on behalf of a client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another." The rule also prohibits a lawyer from knowingly advancing a claim that is unwarranted under existing law. Rule 3.5 prohibits a lawyer from engaging in conduct "intended to disrupt a tribunal.")

"We also express no opinion about whether Woodham violated Rule 8.4 (a) (4) by conduct other than that alleged by the State Bar as a basis for the Rule 8.4 (a) (4) charge," the majority opinion says. "We conclude only that the State Bar failed to prove the alleged violations of Rules 4.2 (a) and 8.4 (a) (4) as charged by the State Bar."

According to the majority, Rule 8.4 (a) (4) prohibits conduct that is intended to mislead another. "Neither the State Bar, the special master, the Review Panel, nor the dissent points to any false or misleading conduct by Woodham in connection with his filing of the complaints in intervention or his attempts to secure a payment from the developers," the majority opinion says.

In the dissent, Justice Robert Benham disagrees with the majority "that the record fails to show clearly and convincingly a violation of Rule 8.4 (a) (4) as charged in the Bar's formal complaint against him."

"According to the majority, the fact that Woodham offered to dismiss his complaints in intervention in exchange for private gain does not establish dishonesty because the statute permits him to intervene for either public or private reasons," says the dissent, joined by Justice Carol Hunstein. "But no lawyer may, without ethical consequences, intervene in a civil action for dishonest reasons. The majority's analysis of this issue ignores certain aspects of the record."

The evidence "supports the conclusion that Woodham engaged in a scheme to intentionally and purposefully misuse his right to intervene in these proceedings in a dishonest and fraudulent manner for the purpose of gaining a financial windfall," the dissent says. The evidence supports a finding that Woodham filed his complaints under his right to intervene "for the improper purpose of attempting to gain a small fortune for himself.…Woodham attempted to 'shake down' developers involved in proposed bond transactions for payments to which he would never have been entitled even if he prevailed and obtained orders barring the bond transactions. In my opinion, an attorney's scheme, as here, to extract, in effect, a payoff in exchange for dismissing a series of complaints that seek no damages whatsoever is

unprofessional conduct involving a dishonest, fraudulent, and deceitful misuse of civil process that violates Rule 8.4 (a) (4)," the dissent says.
Attorneys for Appellant (State Bar): Paula Frederick, Jenny Mittelman
Attorney for Appellee (Woodham): John Woodham

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

* James Michael Glenn (Clayton Co.)	**GLENN V. THE STATE (S14A1331)**
* John Thurston Hites (Atkinson Co.)	**HITES V. THE STATE (S14A1419)**
* Quinton Jones (Fulton Co.)	**JONES V. THE STATE (S14A1749)**
* Carrie Leeks (Fulton Co.)	**LEEKS V. THE STATE (S14A1370)** (While the Supreme Court has upheld Leeks' murder conviction and life prison sentence, the trial court should not have merged the knife possession count with the others, and Leeks should have been sentenced for that specific crime. Therefore, Leeks' sentence is void and the case is being sent back to the trial court for resentencing.)
* Frankie Williams (Grady Co.)	**WILLIAMS V. THE STATE (S14A1937)**

IN OTHER DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorneys:

* Douglas Grant Exley	**IN THE MATTER OF: DOUGLAS GRANT EXLEY (S14Y1542, S14Y1543)**
* Rodd Walton	**IN THE MATTER OF: RODD WALTON (S15Y0021, S15Y0022)**

The Court has accepted a petition for voluntary discipline and ordered the **indefinite suspension with conditions for reinstatement** of attorney:

* Wesley Kent Hill	**IN THE MATTER OF WESLEY KENT HILL (S15Y0285)**

The Court has accepted a petition for voluntary discipline and ordered the **suspension pending termination of appeal and further order of the court** of attorney:

* Lyle Vincent Anderson	**IN THE MATTER OF LYLE VINCENT ANDERSON (S15Y0084)**