Supreme Court of Georgia
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SUMMARIES OF OPINIONS

Published Monday, March 21, 2016

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VEAL V. THE STATE (S15A1721)

The Supreme Court of Georgia has thrown out the life-without-parole prison sentence given to a young man who was convicted of murder and rape during a gang-related crime spree in 2010 that terrorized several Atlanta neighborhoods, including Virginia-Highlands and Grant Park.

In this high-profile **Fulton County** case, **Justice David Nahmias** writes for a unanimous court that due to a decision earlier this year by the U.S. Supreme Court, the life-without-parole sentence given to Robert Veal, who was 17 ½ years old at the time of the crimes, "must be vacated, and we therefore remand the case for resentencing on the murder count."

According to the facts of the case, around 9:30 the night of Nov. 22, 2010, Charles Boyer and his girlfriend, Lisa McGraw, returned from a convenience store to the Virginia Highland Apartment Homes where McGraw lived. They were walking toward her apartment when Boyer went back to retrieve something from his car. As McGraw continued, someone behind her placed a gun to her head and ordered her not to look back. She realized two men were behind her and a third was with Boyer. The men ordered the couple to turn over the keys, and McGraw gave them her purse. Then she and Boyer tried to run away. McGraw made it into her neighbor's apartment, but Boyer did not escape. A neighbor who was walking his dog saw Boyer holding a grocery bag and facing three assailants. When he noticed one of the men was wearing a mask, he realized a robbery was in progress. He turned so the assailants could not see him, then heard two gunshots followed by a third. McGraw also heard three gunshots. The neighbor ran to his apartment and

called 911. The three young men – later identified as Robert Veal, Tamario Wise, and Raphael Cross – fled the scene. Meanwhile Boyer died from gunshot wounds to his torso.

Several hours later, John Davis noticed three men drive up as he walked outside his apartment in Grant Park, a neighborhood several miles from Virginia Highlands. The men held a gun to him and ordered him to take them to his apartment, which he did. Inside they found Davis's roommate, C.T., in bed with her boyfriend, Joseph Oliver. The assailants tied up Davis and Oliver in separate rooms, then took C.T. down the hall to Davis's bedroom, where she was raped and sodomized. DNA from her rape kit later matched Veal's. Police put together a task force to find the perpetrators of these crimes as well as other similar crimes in Atlanta. Two days later they found Boyer's missing cell phone in an abandoned black Toyota SUV that had been stolen and was later linked to Tamario Wise. Further investigation led police to Raphael Cross, who told them that he, Veal, and Wise had set out the night of Boyer's death with the intent to rob someone. He said they drove the black SUV to an apartment complex in Virginia Highlands where they saw McGraw and Boyer. Cross said that after getting out of the SUV, Veal and Wise, who were armed, first struggled with Boyer then Wise shot him. Cross said the three returned to the SUV but switched to a gold Toyota Camry before continuing to Grant Park where they assaulted Davis, Oliver, and C.T. Evidence at trial showed that all three were members of the Jack Boys gang, which is based in the Pittsburgh neighborhood of Atlanta. Additional evidence, including a bag of stolen cell phones and other belongings found along Bicknell Street in southeast Atlanta, tied the Jack Boys to a string of armed robberies in Atlanta prior to the Nov. 22 crimes. In January 2011, six gang members, including Veal, were indicted for a number of crimes.

With Cross testifying against them, Veal and Wise were tried jointly in October 2012 and convicted of murder, rape, aggravated sodomy, kidnapping, false imprisonment, armed robbery, street gang participation, and other crimes. Veal was sentenced to life in prison with no chance of parole for Boyer's murder, plus six additional life prison sentences and another 60 years for his other crimes.

In today's opinion, the state Supreme Court finds that the evidence "was sufficient as a matter of constitutional due process to authorize a rational jury to find Appellant [i.e.Veal] guilty beyond a reasonable doubt of the crimes for which he was convicted." While the Court has rejected Veal's arguments that the evidence was insufficient to corroborate Cross's testimony, and that he should have received only one sentence for criminal street gang activity rather than two, it agrees with his argument that given his age at the time of the crimes, his life-without-parole sentence "constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution," the opinion says. "The Supreme Court of the United States recently made it clear that he is correct."

In the last decade, the U.S. Supreme Court has issued "ever-increasing constitutional restrictions on the states' authority to impose criminal sentences on juvenile offenders," the opinion points out. In 2005, the high court held that the Eighth Amendment forbids imposing a death sentence on juveniles, which it defines as anyone under the age of 18. In 2010, it ruled that the Eighth Amendment also forbids sentencing a juvenile to life without parole for an offense other than murder. And in 2012, in *Miller v. Alabama*, the U.S. Supreme Court ruled "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." Most recently, in 2016, the U.S. Supreme Court decided

Montgomery v. Louisiana¸ which not only said that the *Miller* decision applied retroactively but also clarified that while *Miller* did not outlaw life without parole sentences for *all* juvenile murderers, "the sentence of life without parole is disproportionate for the *vast majority* of juvenile offenders." Under *Montgomery,* life without parole is permitted only in "exceptional circumstances," for "the *rare* juvenile offender who exhibits such *irretrievable depravity* that rehabilitation is *impossible";* for those "rarest of juvenile offenders…whose crimes reflect *permanent incorrigibility*"; and for "those *rare* children whose crimes reflect *irreparable corruption.*"

"The Supreme Court has now made it clear that life-without-parole sentences may be constitutionally imposed only on the worst-of-the-worst juvenile murderers, much like the Supreme Court has long directed that the death penalty may be imposed only on the worst-of-the-worst adult murderers," today's opinion says.

Because in Veal's case, the trial court did not make a determination that he is "irreparably corrupt" or "permanently incorrigible" to put him in this narrow class of juvenile murderers who are eligible for life without parole, the case must go back to the trial court to make that determination, the opinion says.

"Accordingly, we vacate the life-without-parole sentence imposed on Appellant for malice murder and remand the case for resentencing on that count in accordance with this opinion."

Attorney for Appellant (Veal): Long Vo, Georgia Public Defender Council
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, Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.

GREGORY V. SEXUAL OFFENDER REGISTRATION REVIEW BOARD (S15A1718)

A man classified as a "sexually dangerous predator" and ordered to wear an electronic monitor for the rest of his life has won the right to a court hearing to challenge the classification.

In today's unanimous opinion by the Georgia Supreme Court, **Justice Keith Blackwell** writes that Scott Gregory, a convicted sex offender, has the constitutional right to a hearing to determine whether the designation is appropriate. Gregory argued that a **Fulton County** judge's denial of his request for a hearing violated his right to due process.

"We agree, and for that reason, we reverse the judgment below and remand for further proceedings consistent with this opinion," says today's 30-page opinion.

According to briefs filed in the case, in 2012, Gregory was convicted of exposing himself and masturbating via webcam to a person he believed was a 14-year-old girl in an Internet chat room. He was in fact broadcasting the images to a Forsyth County law enforcement officer. Gregory pleaded guilty under the First Offender Act of violating the "Computer or Electronic Pornography and Child Exploitation Prevention Act of 2007." According to state prosecutors, Gregory admitted to having been a sexual exhibitioner for more than 20 years. He was sentenced to 10 years on probation with conditions that included the requirement he get sex offender treatment, abstain from alcohol and drugs, and not commit any new offenses. In August 2012, the Forsyth County Superior Court revoked Gregory's First Offender probation after he was arrested for indecent exposure at a public pool while intoxicated. He admitted to the offense and was sentenced to 10 years, with two in custody, part of which would be suspended upon

completion of in-patient treatment. He would serve the remaining eight years on probation. Gregory is currently on probation and subject to specialized sex offender conditions, including restrictions against frequenting areas where children congregate.

In 2013, based on Georgia Code § 42-1-14, the state Sexual Offender Registration Review Board designated Gregory as a "sexually dangerous predator," which denotes the highest risk and indicates the offender is "at risk of perpetrating any future dangerous sexual offense." The Board, which is made up of law enforcement representatives, as well as professionals licensed in the treatment of sex offenders, employs clinical evaluators who evaluate sex offenders and recommend their risk classifications to the Board. According to the briefs, the Board uses actuarial risk assessment instruments to determine the likelihood that a sexual offender will commit another dangerous sexual offense or another crime against a victim who is a minor. A person designated as a sexually dangerous predator is subject to harsher requirements than other sex offenders, including lifelong electronic monitoring and tracking, more frequent registration with the local sheriff, and employment restrictions, such as the prohibition from working at a business located within 1,000 feet of where minors congregate.

On Sept. 16, 2013, Gregory received a letter from the Board notifying him of his risk classification. The letter advised him of his right to request a reevaluation and to submit additional evidence, including psychological evaluations, treatment and work history, and any sexual history polygraph information. Gregory requested a reevaluation and submitted almost 400 pages of additional documentation, including treatment notes and reports, and letters from the community. According to briefs filed by state prosecutors, a different clinical evaluator reviewed the new information but after noting "robust indicators of sexual recidivism," recommended against lowering Gregory's risk level. Without holding a hearing, on Jan. 13, 2014, the Board concluded Gregory was properly classified as a sexually dangerous predator and denied his petition for reevaluation.

Gregory then filed a petition for judicial review in Fulton County Superior Court, requesting a hearing. In his petition, he challenged his classification and alleged that the classification process was unconstitutional. Georgia Code § 42-1-14 states, "The court may hold a hearing to determine the issue of classification." The statute also says, "The court may uphold the Board's classification," or the court may change it if it finds the evidence shows the offender was not placed in the right risk assessment classification. The court "shall" consider "any relevant evidence submitted," the statute says. In July 2014, the trial court denied Gregory's request for a hearing but instructed him to submit any additional evidence in writing for the court's review. Gregory submitted additional evidence and a brief. In August 2014, the trial court upheld his classification as a sexually dangerous predator and ruled that the statute was constitutional. Gregory then appealed to the state Supreme Court, which agreed to review the case to determine whether the trial court erred in finding that the statute did not violate his constitutional right to due process.

"The Fourteenth Amendment of the United States Constitution forbids the State to 'deprive any person of life, liberty, or property without due process of law,'" today's opinion begins. In this case, Gregory and the Board have disputed whether a classification as a sexually dangerous predator implicates a liberty interest. "We conclude that it most certainly implicates such an interest," the opinion says. In addition to the stigma of such a classification are the lifelong electronic monitoring for which he must bear the cost, and the additional requirements

that restrict his employment and require him to report more frequently. "The requirement that Gregory submit to such electronic monitoring and tracking by means of a device attached to his person is – quite clearly, we think – a serious restraint of his liberty," the opinion says. "We conclude that the liberty interests affected by classification as a sexually dangerous predator are substantial. In the first place, the stigma that follows such a classification – as well as the broad employment restriction imposed uniquely on sexually dangerous predators – undoubtedly may have a serious 'adverse impact on an individual's ability to live in a community and obtain or maintain employment.'" Furthermore, the danger of assigning an erroneous risk is, "we think, 'substantially more significant' in the absence of a hearing either before the Board or the superior court," today's opinion says. And while the Board argues that a hearing in every case involving a classification as a sexually dangerous predator would be very costly, it has presented no such evidence, and other courts have decided that "the fiscal and administrative burdens of a hearing on the likelihood of a sexual offender committing additional crimes are not significant enough to justify the refusal of such a hearing."

In today's opinion, "we conclude that due process demands that an evidentiary hearing be afforded upon request to sexual offenders classified as sexually dangerous predators. We add, however that we see no reason why an evidentiary hearing should be required in both administrative *and* judicial proceedings."

"Affording an evidentiary hearing to Gregory in which he might present evidence favorable to his cause and confront the evidence against him would satisfy the requirement of due process, regardless of whether the hearing is held before the Board or the superior court."
Attorneys for Appellant (Gregory): J. Scott Key, Robert Rubin
Attorneys for Appellee (Board): Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Joseph Drolet, Sr. Asst. A.G., Hye Min Park, Asst. A.G.

GILREATH V. THE STATE (S15A1512)

The Supreme Court of Georgia has reversed the malice murder and cruelty-to-children convictions of a man found guilty in **Forsyth County** of brutally beating his girlfriend's 2-year-old son to death.

In today's unanimous opinion, **Justice Carol Hunstein** writes the trial court made a reversible error by refusing to allow in testimony from the girlfriend's ex-husband about her alleged abuse of her two children.

According to the facts of the case, Miriam Pinckney, a paralegal, was living in California with her then-husband, John Pinckney, when they decided to adopt two babies from Guatemala – a boy, Joshua Pinckney, born in September 2006, and a girl, Maria Pinckney, born in February 2007. They were both infants when the Pinckneys adopted them.

In 2008, as the Pinckneys' marriage began to unravel, Miriam Pinckney rekindled a high school romance with Christopher Gilreath. Eventually Miriam and the children settled in Cumming, GA, and John Pinckney, an attorney, maintained visitation rights with the children. In January 2009, after Gilreath moved in with Miriam and her children, Gilreath's pit dog bit Maria on the cheek and she required stitches. When John Pinckney later saw the stitches and bandages on Maria's face, he insisted on setting up a webcam to see the children. On Feb. 10 and 11, 2009, while communicating with both children via webcam, he saw no injuries on the children.

On Feb. 12, 2009, Pinckney left the children home with Gilreath, who had struggled to find employment. According to prosecutors, Gilreath was resentful both of his unemployment status and being asked to babysit Joshua and Maria, reflected by his statement, "I went to bed an electrician and woke up a nanny." That morning, Pinckney tried a number of times to reach Gilreath by phone but could not. Gilreath eventually contacted her, said Joshua had a "really bad diaper" and she needed to come home. She left work, during which she was stopped by police and cited for speeding, arriving home about 12 noon. Gilreath told her Joshua was taking a nap in the bedroom. Pinckney later said she checked on Joshua, who did not stir, but she did not pull the covers down from his shoulders. She returned to work about 20 minutes later, logging into her work station at 1:02 p.m. She left for the day to return home at about 4:15 p.m. On her way, Gilreath called and said Joshua must have fallen because he had a bruise on his cheek and a scrape on his face. When she arrived home, Gilreath said Joshua had gone back to sleep in the master bedroom. Pinckney found the toddler in the same position on the bed, "sleeping hard." She said she saw the scrape on his face and applied ointment to it. At bedtime, Pinckney carried Maria downstairs while Gilreath carried Joshua who was wrapped in a blanket. When Pinckney said she wanted to change Joshua's diaper before he went to bed, Gilreath assured her he had already done so. After putting the children to bed, Pinckney went grocery shopping, which was confirmed by a Kroger receipt. When she returned, Gilreath told her the children had kicked the covers off, and he had put them back on them. She did not check on the children again that night. The next morning, Feb. 12, after getting ready for work, Pinckney went to the children's room shortly before 7:00 a.m. She found Joshua lying in a puddle of vomit, and it was obvious to her he was dead. Pinckney began screaming, then dialed 911. Although Gilreath reported to medical personnel that Joshua had been breathing that morning, first responders later testified that Joshua showed no signs of life, had been dead for some time and was bruised on his face and abdomen.

The medical examiner who performed the autopsy determined that Joshua had suffered six blows to his head and sustained injuries to his groin, face, forehead, mouth, stomach, bottom, legs, and the inside of his mouth. His death was caused by blunt trauma to the head. The medical examiner said the child had been so severely beaten, his injuries were equivalent to those sustained in a car wreck. The medical examiner estimated the toddler most likely suffered his injuries the afternoon of Feb. 12 and died between 9:00 and 11:00 p.m. that night, eight-to-ten hours before Pinckney called 911. The child's stomach contents indicated he had eaten before being assaulted and the medical examiner concluded the partially digested food in the little boy's stomach was likely from lunchtime. A search of the couple's home revealed marijuana and drug paraphernalia. Gilreath tested positive for marijuana and cocaine while Pinckney did not test positive for any illegal drugs.

Both Gilreath and Pinckney were indicted for felony murder and cruelty to children in the first degree, based on the failure to get medical care. In addition, Gilreath was charged with malice murder, two other felony murder counts, aggravated battery, and possession of cocaine. In August 2010, Miriam Pinckney entered a negotiated plea to cruelty to children for her failure to provide her child with necessary medical care. She was sentenced to 20 years, with the first five in prison and the remainder on probation. During Gilreath's trial, prosecutors filed a motion asking the court to prohibit Gilreath from eliciting testimony from John Pinckney that his ex-wife had a history of threatening both children with violence and had once slapped Maria in the face. The trial court granted the State's motion. The jury subsequently convicted Gilreath of all

charges and he was sentenced to life in prison. Gilreath then appealed to the state Supreme Court, arguing the evidence was insufficient to convict him and he was prevented from presenting a complete defense.

In today's opinion, the high court finds "the evidence was sufficient to enable a rational trier of fact to find Gilreath beyond a reasonable doubt of the crimes of which he was convicted."

But in response to his contention that the trial court was wrong to deny him the opportunity of questioning John Pinckney about Miriam's treatment of the children: "We agree," the opinion says, and it has reversed all but one of Gilreath's convictions. "Certainly a defendant is entitled to introduce relevant and admissible testimony tending to show that another person committed the crime for which the defendant is tried."

In its 2006 decision in *Scott v. State,* the Georgia Supreme Court reversed the felony murder conviction of a man for the beating death of his infant daughter because he was prevented from cross-examining the only other adult present at the time, a woman who had been accused of abusing her own 23-month-old child. "This Court concluded that the evidence in question raised a reasonable inference of the defendant's innocence by showing 'that the other adult in the apartment during the period of time that the fatal injuries were inflicted had a history of inappropriate behavior toward her own infant child, including an allegation of physically forceful abuse,'" the opinion says. Furthermore, the woman was connected to the victim because she was present in the residence at the time the injuries occurred.

Here, Pinckney's ex-husband, an attorney, would have testified that he saw Miriam Pinckney slap then-infant Maria in the face for refusing to eat breakfast and that he considered reporting the incident to child protective services; that she would cuss at the babies or threaten them with beatings when they were too young to understand; and that she had indicated she wanted to send the children back to Guatemala.

"This evidence, like the evidence in *Scott,* raises a reasonable inference of Gilreath's innocence and, like in *Scott,* Pinckney's presence in the residence on the day of the murder connect her with the corpus delecti," the opinion says. "Accordingly, Gilreath's convictions for count one, malice murder, and count six, cruelty to children in the first degree (premised on cruel and excessive physical pain caused by bruising) must be reversed." In addition, the high court has reversed all of Gilreath's other convictions except for count seven, possession of cocaine.

However, "because we determined that the evidence was sufficient to support the original convictions, double jeopardy does not bar the State from retrying Gilreath on counts one through six. Judgment affirmed in part, reversed in part, and remanded."

Attorneys for Appellant (Gilreath): Marcia Shein, Elizabeth Brandenburg

Attorneys for Appellee (State): Penny Penn, District Attorney, Sandra Partridge, Chief Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

GEORGIA FARM BUREAU MUTUAL INS. CO. V. SMITH ET AL. (S15G1177)

The Supreme Court of Georgia has reversed a Court of Appeals decision and ruled in favor of an insurance company. The case stems from a lawsuit filed by a woman who claimed her daughter suffered permanent injuries after ingesting lead-based paint in their rental house.

In today's unanimous opinion, **Chief Justice Hugh Thompson** writes the insurance company is not required to cover the woman's claims because lead-based paint qualifies as a

"pollutant," and under her landlord's insurance policy, injury-related claims involving pollutants are excluded from coverage.

"Because we disagree with the Court of Appeals' conclusion that lead-based paint was not clearly a 'pollutant' as defined by the policy, we reverse the Court of Appeals decision in this case," the opinion says.

According to the facts of the case, Amy Smith sued her landlord, Bobby Chupp, in **Newton County**, alleging that her daughter, who was born in 2004, suffered brain damage from ingesting lead-based paint as a result of Chupp's failure to repair the premises and provide warnings about the risks of lead-based paint. Smith and her daughter had lived in Chupp's rental house since a few months after her daughter's birth. She alleged in her personal injury complaint that in 2007, a health department inspection revealed the house had been painted with lead-based paint; that the paint was cracking, chipping and peeling; that medical tests in 2007 revealed the child had lead in her bloodstream; and that the child's exposure to the lead-based paint during her infancy resulted in debilitating, permanent disabilities.

Chupp had a commercial general liability insurance policy on the property with Georgia Farm Bureau Mutual Insurance Co. After Smith sued Chupp, the insurance company filed an action against both Smith and Chupp, asking the court to declare that it was not required to cover the child's alleged injuries, nor was it required to defend Chupp in the personal injury action because the child's alleged injuries came under the policy's "pollution exclusion."

Chupp's policy stated: "We will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies." Under a section called "Exclusions," the policy stated: "This insurance does not apply to: 'Bodily injury' or 'property damage' arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants.'" The policy defined "pollutants" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste."

The dispute in this case is whether Smith's lead-based paint claims are excluded from coverage under the insurance policy's "pollution exclusion."

The trial court ruled in favor of the insurance company, finding that Smith's claims were excluded under the policy. In its ruling, the trial court found that the Georgia Supreme Court's 2008 ruling in *Reed v. Auto-Owners Insurance Co.* was right on point. In that case, the issue was whether carbon monoxide was excluded under a pollution exclusion clause identical to the one here. In answering yes, the state Supreme Court reasoned that it "need not consult a plethora of dictionaries and statutes to conclude" that carbon monoxide was a pollutant.

But in this case, the Court of Appeals reversed the trial court's decision, ruling that the pollution exclusion did not encompass injuries caused by the ingestion of lead-based paint. It further held that if Georgia Farm Bureau Mutual "had intended to exclude injuries caused by lead-based paint from coverage in the policy at issue in this case, it was required, as the insurer that drafted the policy, to specifically exclude lead-based paint injuries from coverage." Because the appellate court ruled the exclusion did not apply, it also ruled that the insurance company "had a duty to defend Chupp against Smith's lawsuit."

But in today's opinion, the high court rules the Court of Appeals was wrong.

"Under the broad definition contained in Chupp's policy, we conclude that lead present in paint unambiguously qualifies as a pollutant and that the plain language of the policy's pollution

exclusion clause thus excludes Smith's claims against Chupp from coverage," the opinion says. "Accordingly, we reverse the decision of the Court of Appeals."

When construing the terms of an insurance policy, if the contractual language is "explicit and unambiguous, 'the court's job is simply to apply the terms of the contract as written, regardless of whether doing so benefits the carrier or the insured,'" the opinion says, quoting the *Reed* decision. Here, Chupp's policy "contains an absolute pollution exclusion clause which precludes recovery for bodily injury or property damage resulting from exposure to *any* pollutant," and "the method by which Georgia's courts are to interpret absolute pollution exclusion clauses was clearly established by this Court in *Reed.* Because our decision in *Reed* controls the manner in which pollution exclusions in commercial general liability policies are to be construed by the courts of this State, the Court of Appeals erred in failing to apply this Court's analysis in *Reed* to the facts of this case."

"Accordingly, the Court of Appeals was required to simply apply the terms of the contract as written," today's opinion says. "In interpreting the insurance policy's provisions, the Court of Appeals had 'no more right by strained construction to make the policy more beneficial by extending the coverage contracted for than they would have to increase the amount of the insurance."

Attorneys for Appellant (Georgia Farm Bureau Mutual): Norman Fletcher, Duke Groover, Lee Gillis, Jr.

Attorneys for Appellees (Smith, Chupp): Jonathan Johnson, C. Andrew Childers, John Strauss

GEBREKIDAN V. CITY OF CLARKSTON (S15A1442)

The Supreme Court of Georgia has unanimously reversed the conviction of a convenience store operator found guilty in **DeKalb County** of violating a local ordinance that outlaws the operation of "coin-operated amusement machines" in stores that also sell packaged alcoholic beverages.

Under today's opinion, written by **Justice David Nahmias**, the high court finds that under the Georgia Constitution, state law – which allows the machines in stores that sell alcohol – preempts the local ordinance which forbids them.

According to the facts of the case, Aster Zeru Gebrekidan operates a convenience store in Clarkston, GA on East Ponce de Leon Avenue where she also has several "coin-operated amusement machines" (COAMs), as defined in the Georgia Amusement Machine Law (Georgia Code § 50-27-70 (b) (2).) In addition to selling food and other products, Gebrekidan also has sold packaged beer and wine for consumption elsewhere. In June 2014, Gebrekidan was served with a summons to appear at the City of Clarkston Municipal Court to answer the charge of, "operating coin-operated amusement machines in retail store selling packaged beer, malt beverages or wine," in violation of the "Alcoholic Beverages" chapter of the Clarkston City Code. Section 3-57 of that chapter states: "No retail dealer in packaged beer, malt beverages or wine shall permit on his premises any slot machines or mechanical music boxes or pinball machines or any form of electronic or mechanical game machine or coin-operated device which might be used for entertainment or amusement purposes." Following a hearing, the municipal court judge found Gebrekidan guilty of violating the city ordinance, which is a misdemeanor, and ordered her to pay a fine of $250. The judge found that section 3-57 is "primarily a regulation of alcohol rather than coin operated amusement machines" and is "a reasonable

exercise of the City's discretionary power to set rules for alcohol sales…." The DeKalb County Superior Court upheld the conviction and the ordinance's constitutionality. Gebrekidan then appealed to the state Supreme Court, arguing that the local ordinance is preempted by state law and is therefore void.

In today's opinion, "we conclude that the State's Coin Operated Amusement Machines Laws preempt the City's ordinance at least insofar as the ordinance applies to COAMs as defined by the state statutes, and we therefore reverse Gebrekidan's conviction and fine."

"State statutes generally control over local ordinances on the same subject," the opinion says. "This doctrine, known as state preemption, is rooted primarily in the Georgia Constitution's Uniformity Clause, which now reads: '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….'"

The General Assembly may preempt local ordinances on the same subject as a general law either "expressly or by implication," the opinion says. "In implied preemption, the intent of the General Assembly to preempt local regulation on the same subject as the general law is inferred from the comprehensive nature of the statutory scheme. In this context the General Assembly speaks through its silence as well as its words; the broad scope and reticulated nature of the statutory scheme indicate that the legislature meant not only to preclude local regulation of the various particular matters to which the general law directly speaks, but also to leave unregulated by local law the matters left unregulated in the interstices of the general law."

As the Superior Court recognized, Georgia's statutory scheme regulating the coin operated amusement machines industry is "voluminous," and "we conclude that the court erred in holding that this comprehensive general law did not preempt the local ordinance by implication," the opinion says. The state laws on the subject take up more than 35 pages of the Georgia Code, and "where the state statutory scheme is as comprehensive as the COAM Laws, we presume that the General Assembly meant to occupy the entire field of regulation on the subject, and thus that the gaps the legislature left were intended to be unregulated matters rather than spaces for local governments to fill by local regulation."

"The direct effect of § 3-57 is to ban coin operated amusement machines from businesses in the City of Clarkston where the State of Georgia allows them. For these reasons, we conclude that the [state laws] preempt City Code § 3-57 by implication." And while the Constitution's Uniformity Clause does add an exception to the basic preemption rule, "we conclude that the local ordinance is not authorized by general law, and thus the ordinance is not saved from preemption by the [state laws] under the 'except' provision of the Uniformity Clause," today's opinion says. "We therefore reverse the contrary judgment of the superior court."

Attorneys for Appellant (Gebrekidan): Paul Oliver, Jonathan Gaul, Les Schneider
Attorney for Appellee (City): Stephen Quinn

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

* Maurice Murray Battle (Bibb Co.)	**BATTLE V. THE STATE (S15A1510)**
* Vonterry Marquette Bryant (Richmond Co.)	**BRYANT V. THE STATE (S15A1738)**
* Courtney Franklin (Fulton Co.)	**FRANKLIN V. THE STATE (S15A1308)**
* Jeremy Saffold (Upson Co.)	**SAFFOLD V. THE STATE (S15A1375)**