Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, June 21, 2016

10:00 A.M. Session

THE STATE V. MORROW (S16G0584)

The State is appealing a Georgia Court of Appeals decision that reversed the sexual assault conviction of a **Cherokee County** school paraprofessional who had sexual relations with a 16-year-old student.

FACTS: In December 2010, Robert Leslie Morrow, 27, was a paraprofessional and wrestling coach at River Ridge High School. The school had hired him as a paraprofessional to attend to the needs of a special-needs child, known as "Pablo." It was Morrow's job to accompany Pablo to all his classes and ensure that the boy, who had mental illness, did not disrupt the class. At the same time, P.M., 16, was a sophomore and cheerleader at River Ridge High School. She got to know "Coach Morrow," as the students called him, because she shared homeroom and math class with Pablo. During December 2010, P.M. misbehaved and was placed in River Ridge's in-school suspension program for eight days. During that period, Pablo was also in detention for one day, and Morrow accompanied him. P.M. acknowledged that earlier, she had given Morrow her phone number by leaving a note on his car window. The day Morrow accompanied Pablo to in-school suspension, P.M. again gave him her phone number, and he then sent her a text message. The two then began exchanging what she described as "flirty" text messages. On December 11, 2010, P.M. drove herself to a birthday party of a fellow student.

While there, she and Morrow exchanged texts and talked by phone. She then left the party and drove to meet Morrow at a nearby Publix parking lot where she got into his car. Morrow drove to a parking lot in his neighborhood where they had sexual contact and P.M. performed oral sex on him. A week later she changed high schools and became enrolled at Roswell High School. After leaving River Ridge, P.M. met Morrow on two to four other occasions and the two had sexual intercourse.

About six months later, P.M. told her mother about her sexual contact with Morrow, and she took her daughter to report the matter to local law enforcement. Morrow was arrested and indicted on one count of sexual assault under Georgia Code § 16-5-5.1. That statute says: "A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person (1) is a teacher, principal, assistant principal, or other administrator of any school and engages in sexual conduct with such other individual who the actor knew or should have known is enrolled at the same school…."

Morrow's attorney filed a motion to "quash" or throw out the indictment, arguing that because he was a "paraprofessional," rather than a "teacher," the statute under which he was indicted did not apply to him. Following a hearing, the trial court denied Morrow's motion, relying on the Georgia Court of Appeals' 2013 decision in *Hart v. State,* in which it ruled that the term "teacher," as used in § 16-5-5.1, "would include a paraprofessional who taught in a high school classroom." Morrow was subsequently tried by a jury and convicted of sexual assault. He was given a 10-year sentence on probation with specialized sex offender conditions, a $1,500 fine, and 240 days in a detention center. Morrow appealed to the Georgia Court of Appeals, arguing that the statute did not apply to him because he was a paraprofessional, not a teacher, and there was insufficient evidence that he had supervisory or disciplinary authority over P.M. The appellate court agreed and reversed the ruling, finding that the State was required to prove that Morrow was a "teacher, principal, assistant principal, or other administrator" of the school where P.M. was enrolled *and* that he had supervisory or disciplinary authority over her. "Given the State's failure to prove that Morrow had any supervisory or disciplinary authority over the victim, it failed to prove an essential element of the charged crime," the Court of Appeals ruled. The State now appeals to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals correctly interpreted § 16-5-5.1 to require proof that the defendant had "direct disciplinary or supervisory authority" over the student in question, as opposed to having that authority over students "generally." Also, the high court asked whether any "rational" judge or jury could have reached this jury's conclusion that Morrow was a teacher at River Ridge High School who committed sexual assault under § 16-5-5.1.

ARGUMENTS: The District Attorney's office, representing the State, argues that paraprofessionals are, by definition, educators. Morrow not only coached wrestling, but he was also paid to be Pablo's educator in the classroom. "The jury was amply authorized to exercise its common sense and find that, under the evidence presented, Coach Morrow was indeed a teacher at River Ridge High School in more ways than one – a teacher with, at the very least, general supervisory authority over students and who engaged in illegal sexual contact with a female student at the school," the State argues in briefs. "That the General Assembly contemplated that teachers typically have supervisory authority over students generally, and that such authority is sufficient to trigger the statutory prohibition against sexual contact with students generally, is evident from the fact that the prohibition applies as to each and every student 'who the actor

knew *or should have known* in enrolled at the same school….'" The Court of Appeals was wrong to conclude that a "showing that all teachers at a school, including the accused, have some kind of general authority over students in the school, is insufficient to demonstrate the supervisory or disciplinary authority required to convict a defendant under § 16-5-5.1," the State contends. The Court of Appeals has effectively reasoned that "the General Assembly intended for teachers to be free to have sexual contact with any and all students above the age of consent without committing sexual assault so long as the teacher limits his sexual exploits to those students over whom he has no more than general disciplinary or supervisory authority." In this case, "the Court of Appeals failed to consider that the General Assembly 'meant what it said' when it established that enrolled students are sexually off limits to teachers," the State argues. "Furthermore, when the provision is read in its most natural and reasonable way, there is no basis for engrafting the 'direct authority' limitation that the Court of Appeals has, for the first time, placed on the statute, since such a limitation conflicts with the clear implications of the General Assembly's straightforward, wide-net enrollment limitation." In answer to the second question posed by the state's high court, the victim confirmed that she viewed Coach Morrow as "an authority figure." She referred to her homeroom teacher and math teacher as her "primary teacher" for those periods, implying Coach Morrow was viewed as a secondary teacher. And when asked if there generally was more than one teacher in homeroom, she replied yes and one was Coach Morrow. Also, a paraprofessional is governed by the same Code of Ethics for Educators that applies to teachers, administrators, aides, substitute teachers and others who have applied for a certificate issued by the Professional Standards Commission. "A paraprofessional is, by definition, an educator," the State argues. And under the Code of Ethics, educators such as Morrow are on notice that "committing any sexual act with a student or soliciting such from a student" is considered unethical conduct. In Cherokee County, among a paraprofessional's written duties is "Assisting with the supervision of students including classroom and school-wide supervision…." "It is beyond all dispute that an inherent authority possessed by educators in Cherokee County such as defendant is the inherent authority to supervise students generally." The Supreme Court should reverse the Court of Appeals decision and affirm the Cherokee County jury's conviction.

Morrow's attorney, a former state prosecutor, argues the Court of Appeals correctly interpreted § 16-5-5.1 (b) "to require direct supervisory or disciplinary authority over the particular student in question, as opposed to disciplinary or supervisory authority over students generally." The State's claim to the contrary "relies upon the hope that this Court will cast off its judicial restraint and impose the State's self-dubbed 'wide-net interpretation' of this statute." "Certainly, policy arguments can be made that all adults in a school setting should be subject to penalty for sexual contact with any students who attend that school. However, whether such policy should have the force of law is the job of the legislature to so determine." Morrow was prosecuted as a "teacher," yet he never held any certification as a teacher or any other professional certification. Rather he was employed as a paraprofessional to watch over one special-needs student. And he was a volunteer wrestling coach. "Clearly, § 16-5-5.1 proscribes sexual contact by specified classes of individuals who have direct supervisory and disciplinary authority," Morrow's attorney argues. "Any attempt to replace this understanding is to rewrite the statute or to limit its protections." In answer to the second question, "Morrow was not a 'teacher, principal, assistant principal, or other administrator," and this Court should overrule the Court of Appeals' *Hart* decision. The State points to no evidence that Morrow ever taught in a

high school classroom. No conduct constitutes a crime unless it is specifically described as a crime in a statute. "Thus, it is insufficient that a high school student's perspective or a job description set of goals or a Code of Ethics suggests that one may be considered a teacher," the attorney argues. In 2010, the General Assembly amended § 16-5-5.1, and the new enactment created a specific list of persons that limited those who could be subject to the offense of sexual assault upon a student. "While the prior statute prohibited sexual contact by anyone having supervisory or disciplinary authority over another in school, the amended statute added an additional element to the offense, limiting its application to a specific list of persons." Here, the State relies upon an ordinary meaning of "teacher" to apply to paraprofessionals, while Morrow relies upon the professional trade definition of teacher that does not. Under well-established law, "If after applying the usual tools of statutory construction, the language of a statute is still susceptible to more than one reasonable interpretation, that which is most favorable to the defendant must be adopted," Morrow's attorney argues. Therefore, Morrow "prays this Court to overrule *Hart* and make clear that statutory revision is properly done through the representative democratic processes of the legislature."

Attorneys for Appellant (State): Shannon Wallace, District Attorney, Wallace Rogers, Jr., Asst. D.A., Cliff Head, Asst. D.A.

Attorney for Appellee (Morrow): T. Bryan Lumpkin

WESTERN SKY FINANCIAL, LLC ET AL. V. STATE OF GEORGIA, *EX REL. OLENS, ATTORNEY GENERAL (S16A1011)**

STATE OF GEORGIA, *EX REL.* OLENS, ATTORNEY GENERAL V. WESTERN SKY FINANCIAL, LLC ET AL. (S16X1012)

More than $15 million is at stake in an appeal by out-of-state payday lenders who have loaned small amounts of cash over the internet to millions of Georgians. The lenders are appealing a **Fulton County** judge's ruling that under a Georgia statute they are prohibited from making loans in Georgia under $3,000. They argue the statute does not apply to loans that involve interstate commerce.

FACTS: This complex case involves "payday loans," which are short-term loans of a small dollar amount that are usually offered by businesses other than banks. The amount of money loaned is supposed to be enough to get the borrower to his next "payday." Because the loans are short-term, the cost of borrowing is high in fees and interest, and opponents argue that payday loans prey upon the most vulnerable people in society. Payday lending has been illegal in Georgia for more than 100 years, but it has continued to grow. In 2004, the Georgia General Assembly enacted the Payday Lending Act (Georgia Code § 16-17-1) in an attempt to shut the industry down. In its findings, the General Assembly stated that "payday lending continues in the State of Georgia and that there are not sufficient deterrents in the State of Georgia to cause this illegal activity to cease. The General Assembly has determined that various payday lenders have created certain schemes and methods in order to attempt to disguise these transactions or to cause these transactions to appear to be 'loans' made by a national or state bank chartered in another state in which this type of lending is unregulated, even though the majority of the revenues in this lending method are paid to the payday lender. The General Assembly has further determined that payday lending, despite the illegality of such activity, continues to grow in the State of

Georgia and is having an adverse effect upon military personnel, the elderly, the economically disadvantaged, and other citizens of the State of Georgia."

In July 2013, Georgia's attorney general filed a complaint against Western Sky Financial, LLC, a Native American tribal internet lender based in South Dakota; Martin A. Webb, Western Sky's sole shareholder and a member of the Cheyenne River Sioux Tribe; CashCall Inc., which hosted Western Sky's website and provided customer support and is a California corporation; and Delbert Services Corporation, which also helped Western Sky service the loans. In the complaint, the attorney general alleged the defendants violated Georgia Code § 16-17-2 (a) of the Payday Lending Act which states: "It shall be unlawful for any person to engage in any business, in whatever form transacted, including, but not limited to, by mail, electronic means, the Internet, or telephonic means, which consists in whole or in part of making, offering, arranging, or acting as an agent in the making of loans of $3,000 or less…." Western Sky and the others filed a motion asking the court to dismiss the action. Following a hearing, the trial court issued an injunction which prohibited Western Sky and the others from making unsecured loans of $3,000 or less in the state of Georgia, and which restrained CashCall and Delbert from transferring to third parties the servicing rights on $3,000 loans made to any Georgians. In an injunction, the trial court ordered the defendants to deposit $200,000 into an escrow account. But the Attorney General's office later asked the court to modify the injunction after discovering two things: that the defendants had collected far more than $200,000 from Georgia consumers during the litigation – closer to $15 million – and that the lenders could soon be insolvent. The Attorney General presented evidence that Western Sky had closed its lending operations and laid off its employees and that the defendants had settlements with other states that collectively cost them at least $10 million. In October 2015, the trial court amended the injunction requiring Western Sky and the defendants to "deposit $15,279,762.95 into the registry of the court" and "continue servicing the loans at issue at their own expense." In this pre-trial appeal, Western Sky and the others now appeal to the Georgia Supreme Court. In a cross-appeal, the Attorney General's office appeals the trial court's refusal to allow it to add two other parties it argues were inextricably involved in the illegal lending enterprise.

ARGUMENTS (S16A1011): Attorneys for Western Sky and the others argue that the trial court erred by applying Georgia's Payday Lending Act to the loans and by refusing to dismiss the action. "By its express terms, the Payday Lending Act applies only to intrastate loans, excluding from its ambit loans – like those here – that involve interstate commerce," they argue in briefs. Specifically, the Act states that, "Payday lending involves relatively small loans and does not encompass loans that involve interstate commerce." Without question, "the loans at issue here involved interstate commerce," they argue. "Loans that are obtained by Georgia residents through applications transmitted to and approved by an out-of-state, reservation-based Indian lender; that are funded from an out-of-state bank account; and that are repaid across state lines unquestionably 'involve interstate commerce.'" The Payday Lending Act clearly "applies only to in-state loans made by Georgia lenders." The trial court also erred in applying the Georgia Act in this case because the ruling is "in violation of bedrock principles governing choice of law, tribal sovereignty, and the Indian Commerce Clause" of the U.S. Constitution, the attorneys argue. Western Sky is owned by Webb who is a member of the Cheyenne River Sioux Tribe, and under the Indian Commerce Clause, the tribe's law applies, not Georgia's. "Tribal sovereignty precludes a state from regulating the conduct of Indians on out-of-state

reservations," the attorneys argue. The trial court also erred in ordering the injunction which lacks any legal or factual support. The injunction order is invalid because the Act "nowhere authorizes the Attorney General to obtain injunctive relief." And it "improperly imposes an unlawful prejudgment attachment" when it would have an adequate legal remedy by seeking money damages if the Attorney General eventually prevails in this case. "As such, this Court should vacate the trial court's extraordinary order directing Appellants [i.e. Western Sky, etc.] immediately to disgorge more than $15 million and to perform future loan collections to accumulate a victory pot for the AG," the attorneys argue.

According to the Attorney General's office, the same month it filed its complaint in this case, Western Sky stopped offering the loans in Georgia and has since suspended its lending operations throughout the country. Before then, however, the enterprise made over 18,000 loans of $3,000 or less to Georgia borrowers who still owe about $6.5 million on the loans, and have paid more than $31.5 million in interest and more than $6.5 million in fees. "Indeed, even after the State sought the aid of the courts, Georgia consumers paid over $15 million on the loans." Ads on Western Sky's website offered loans in the amounts of $850, $1,500, and $2,600 with annual percentage rates ranging from 140 percent to 343 percent and fees from $75 to $500. The trial court did not err in denying the defendants' motion asking the judge to dismiss the complaint. The Act's scope is not limited by the provision that defines "payday lending" to "not encompass loans that involve interstate commerce." The definition itself is preceded with this beginning: "Without limiting in any manner the scope of this chapter, 'payday lending' as used in this chapter encompasses…." "The opening phrase means exactly what it says: the definition of 'payday lending' is not intended to limit the scope of the chapter," the State argues. "Despite Defendants' protests to the contrary, there is no way to give meaning to that phrase without rejecting Defendants' argument that the definition of 'payday lending' limits the Act's scope." The whole purpose of the Act was to end the business of high-interest, small-dollar lending. "But if the Act's scope were limited to 'not encompass loans that involve interstate commerce,' the Act would not accomplish that purpose," the state argues. It probably would "prohibit nothing all; and it certainly would not end the business of usurious, small-dollar lending." As to the defendants' argument that state law does not apply because their contracts with Georgia borrowers "were formed on the Reservation," the defendants' lending enterprise "occurs off-reservation and is subject to state regulation." There is no evidence Georgia borrowers have ever traveled outside Georgia related to these loans. Finally, the trial court "properly modified the pre-trial injunction orders so they would accomplish their intended purpose," the State argues.

ARGUMENTS (S16X1012): In the cross-appeal, the Attorney General argues the trial court erred in denying his motion to add J. Paul Reddam and WS Funding, LLC as additional defendants in this action. "Evidence produced in discovery reveals that Reddam – the sole shareholder of two of the existing defendants [including CashCall] – should be held liable for violating the Payday Lending Act because he 'specifically directed' and 'participated or cooperated' in the existing defendants' violations of the Act," the State argues. "Evidence produced in discovery also reveals that WS Funding – a wholly owned subsidiary of one of the existing defendants – is a shell corporation created to facilitate the existing defendants' violations of the Act. It is, in other words, one of the tools Reddam used on the job, and should accordingly also share in the liability." In 2009, Reddam and Webb began negotiating a series of agreements that would eventually govern the terms of the whole lending enterprise. The trial

court abused its discretion when it denied the State's motion to add Reddam and WS Funding as defendants to this action, the State contends.

Attorneys for Western Sky and the other defendants argue that Attorney General Samuel Olens "mischaracterizes the factual record," and the trial court properly concluded he had "failed to carry his burden to satisfy the requirements for adding parties to an existing suit." These were two parties long known to him. "Even though the AG had access to all of the facts underpinning his proposed claims against those two parties, WS Funding, LLC and J. Paul Reddam, he failed to offer any justification for waiting for over two years to seek their addition as parties," the attorneys argue. "Nor did the AG establish that such an eleventh-hour addition of proposed defendants would not prejudice them," by putting them at a disadvantage at such a late stage of the litigation. He now attacks the trial court's ruling as an abuse of discretion, yet he "urges an unsupported and unprecedented broadening of the applicable statute of limitations, and ignores his role in securing the ruling." "The trial court did not abuse its discretion in denying the motion because the AG failed to meet his burden to demonstrate excusable delay and lack of prejudice," the attorneys contend.

Attorneys for Appellants (Western Sky et al.): R. Lawrence Ashe, Jr., William Holley, II, Nancy Baughan, Scott Zweigel, Joseph Barloon, Clifford Sloan, Thomas Nolan

Attorneys for Appellees (Olens): Samuel Olens, Attorney General, Timothy Butler, Counsel for Legal Policy, Daniel Walsh, Sr. Asst. A.G., Charlene Swartz, Asst. A.G., Monica Sullivan, Asst. A.G., Andrew Chesser, Asst. A.G.

* "Ex rel." is an abbreviation for a Latin term that is used in the title of a legal proceeding filed by a state attorney general on behalf of the government. Generally, the action has been instigated by a private person who needs the state government to enforce the public's right.

RELIANCE EQUITIES, LLC V. LANIER 5, LLC (S16A1013)
WHITNEY ET AL. V. LANIER 5, LLC (S16A1014)

A company is appealing a **Habersham County** judge's refusal to allow it to intervene as a party in a case to get back property which had been sold in a tax sale and in which the company had a security interest. In a related appeal, the man who had owned that property before it was sold by the County for his failure to pay property taxes is appealing the judge's ruling that he missed the deadline to redeem the property, claiming he never received the legally required notice telling him when his deadline was.

FACTS: In August 2013, the Habersham County Tax Commissioner sold a 1.9 acre tract of land owned by Frederick A. Whitney to satisfy delinquent ad valorem taxes that Whitney had failed to pay. Lanier 5, LLC bought the property at the tax sale. Under Georgia law, the "right of redemption" allows a person to "redeem" or reclaim his property and prevent foreclosure if he pays off the taxes, plus interest and other costs. Under Georgia Code § 48-4-45, Whitney had one year before that right would end and his right of redemption would be "foreclosed." Whitney did not live at the property in Habersham County but rather lived in Cumming, GA, in Forsyth County. One year after buying the property, Lanier began the process of foreclosing Whitney's redemption rights. The statute says: "After 12 months from the date of a tax sale, the purchaser at the sale…may terminate, foreclose, divest, and forever bar the right to redeem the property from the sale by causing a notice or notices of the foreclosure as provided for in this article." The

statute specifies that for anyone who lives outside the county where the property is located, the notice must be sent to that person "by registered or certified mail or statutory overnight delivery…if the address of that person is reasonably ascertainable." On Aug. 15, 2014, Lanier sent notice of its intent to foreclose on Whitney's right to redeem the property by certified and first class mail to his address in Cumming. The notice stated that his final deadline for redeeming the property was Sept. 21, 2014. On Aug. 29, 2014, a security deed was created between Whitney and Reliance Equities, LLC and filed in Habersham County. On Sept. 23, 2014 – two days after the deadline given by Lanier – Whitney attempted to redeem the property from Lanier with a check for $3,592.65. Lanier rejected the check because it came two days after the final date to redeem. On March 9, 2015, Lanier filed a "Petition to Quiet Title," asking the court to clarify that Lanier had title to the property and was the rightful owner and stating that Whitney's right of redemption had been foreclosed. Whitney then filed a motion asking the court to find that he was the rightful owner. In June 2015, the trial court ruled in favor of Lanier, entering an order that stated Lanier had satisfied the requirements concerning the right of redemption and finding that Whitney's attempt to redeem the property was too late and he had failed to regain ownership of the property. Reliance, who had not been named in Lanier's petition, sought to intervene in the quiet title action, but the court denied its request.

In S16A1013, Reliance appeals the court's ruling denying it the right to intervene in Lanier's quiet title action and denying it the right to redeem the property. In S16A1014, Whitney appeals the court's ruling denying him the right to get his property back, based on his claim that he never received notice giving him his deadline.

ARGUMENTS (S16A1013): Reliance's attorneys argue the trial court erred by refusing to allow Reliance to intervene in Lanier's quiet title action so it could protect its interest in the property. "Mr. Whitney desired to redeem his property from the tax sale but lacked the financial means to do so," they argue in briefs. "So Mr. Whitney borrowed the funds to redeem from Reliance, and to that end granted a security deed to Reliance" that was dated Aug. 29, 2014" and recorded in Habersham County. Under state law, as a mortgage holder, Reliance was entitled to be notified of any attempted foreclosure by Lanier of Reliance's right to redeem the property from the tax sale. "It is undisputed that Lanier never issued any notice directed to Reliance," the attorneys argue. Reliance's right to redeem the property is not affected by the fact that it signed the security deed after the date of the tax sale. In its 1986 decision in *Leathers v. McClain*, the Georgia Supreme Court ruled that the Georgia statute "does not provide that the interest must have been held at the time of the tax sale." "Georgia law favors redemption after tax sales, and must be construed in favor of those entitled to redeem (like Reliance)," the attorneys contend.

Lanier's attorney argues the trial court correctly ruled that Reliance failed to prove all the elements required for intervention. Under state law, Reliance must prove interest, potential impairment and inadequate representation. First, Reliance claims an interest which was created *after* Lanier began the process of foreclosing the outstanding rights of redemption. "Reliance omits the inconvenient fact that Whitney was not the owner of the subject property at the time he executed the security deed in favor of Reliance or that the security deed obtained from Whitney was created more than one year after the tax sale," the attorney argues in briefs. And while he attempted with Reliance's help to get the property back with a check for $3,592.65, he missed the final deadline to do so by two days. In this case, "the security deed executed by Whitney did not exist at the time Lanier purchased the property at the tax sale and still did not exist at the time

Lanier commenced the process to foreclose the right of redemption." "One cannot transfer or convey an interest in real property greater than he has," the attorney argues, quoting a 2002 Georgia Court of Appeals decision. Referring to the "vexatious litigation" Reliance has waged in this case, Lanier's attorney accuses Reliance of "a material misrepresentation of the facts." "Dan West, the Manager of Reliance, contacted Whitney after reading the foreclosure notice regarding the subject property in the newspaper," the attorney argues. "Nothing indicates prior to this contact that Whitney intended to redeem the subject property, and the undisputed facts suggest Whitney lacked the financial means to redeem. Reliance reached an agreement with Whitney that would allow Reliance to purchase an interest in the property by creating an invalid security deed which would provide the illusion of giving Reliance a right of redemption." On Sept. 23, 2014, West, acting on Whitney's behalf, attempted to redeem the property from Lanier. "The funds required to redeem the property were provided by Reliance, not Whitney," Lanier's attorney argues. Lanier rejected the attempt because Whitney's right of redemption had expired two days earlier. Lanier's attorney further argues that court records show that Whitney's attorney and Reliance's attorney have together represented Reliance in previous tax sales. Lanier's attorney "believes" that Reliance engaged the attorney for Whitney and covered all his legal costs. "The failure of Reliance to support and address the required elements that would permit a right of intervention is ample reason for the trial court to deny Reliance's motion to intervene," Lanier's attorney argues.

ARGUMENTS (S16A1014): Whitney's attorney introduces his arguments by reminding the state Supreme Court that the Court has "long recognized that our State has harsh rules and consequences when citizens fail to pay their property taxes." Under state law, "if the sheriff 'is unable for any reason to effect service upon any person required to be served, the person who requested that service be made shall forthwith cause a copy of the notice to be published" in a local legal newspaper. "Here it is undisputed that Appellant Whitney did not receive a Barment Notice from a deputy sheriff or process server," Whitney's attorney contends. Therefore, his attorney argued he was entitled to notice via publication before his right to redemption could be foreclosed. The trial court was wrong to disagree. Lanier had a certified mailing sent to Whitney's residence in Forsyth County, but it was returned as undelivered, "thereby placing Lanier on notice that Mr. Whitney had not received the Barment Notice," the attorney argues. Lanier's argument is in direct contradiction to this Court's repeated pronouncement that rules governing the Barment Process are to be liberally construed in favor of property owners" seeking to get their property back.

Lanier followed the correct procedures and the trial court ruled correctly, the company's attorney argues. After sending the notice by certified mail and receiving a return notice that it was not delivered, Lanier confirmed it had the correct address by speaking on the phone directly to Whitney himself. Lanier sent a second copy of the notice by regular first class mail, which was not returned. Yet Whitney claims he never saw the regular mail copy or the three separate certified mail delivery notices. In its June 9, 2015 order, the trial judge correctly found that Lanier, "by mailing the notice certified mail, and by mailing an additional copy by regular mail, and by speaking to Whitney on the telephone to verify the address has satisfied the due process requirements of statutory and common law concerning the right of redemption of property," Lanier's attorney argues. "The trial court correctly concluded that Whitney's right of redemption had been foreclosed by the certified and regular mail notices." Furthermore, no "provisions in

recognized statutory authority or common law allow notice by publication if the address of the intended party is known," the attorney contends. "When, as here, the address of the intended party is known, notice to that party is only recognized by sheriff, overnight delivery, registered or certified mail." Lanier also argues that Whitney clearly understood how the process worked because once before his property was sold by the Tax Commissioner due to his failure to pay taxes. "On that prior occasion, Appellant Whitney timely redeemed the property, demonstrating his knowledge of tax sale redemption process and requirements." "In point of fact, Whitney did not show any indication of intending to redeem the property until after Dan West of Reliance read the published notice and went to Whitney to offer some type of deal," Lanier argues. "Whitney begs to be relieved of the consequences of his own inaction, yet is it Whitney, the delinquent taxpayer, or more likely Reliance, the third party investor, who seeks to gain a windfall through a second chance."
Attorneys for Appellants (Reliance, Whitney): Christopher Porterfield, Adam Caskey
Attorney for Appellee (Lanier): Kerry Doolittle

PARKS v. THE STATE (S16A1001)

In this **Cobb County** case, a man is appealing his convictions for malice murder and possession of a firearm during the commission of a felony which resulted from a dispute over parking at the Riverside Apartment complex.

FACTS: On the night of Sept. 15, 2013, Terrence Washington's girlfriend, T'osha Guthrie, came to stay with him, as she did regularly. The next morning, Washington walked Guthrie out to her car, where they ran into Harold Parks, a neighbor. Parks was angry that Guthrie had parked in front of his apartment. Although residents were not assigned specific parking spaces, Parks believed he should have the space closest to his apartment. Washington had told his mother he was having problems with Parks over parking spaces, and this was not the first encounter he and his girlfriend had had with Parks over parking. But that morning, Parks "went into a rage" and threw his coffee mug at Guthrie. She yelled at him and an argument ensued, attracting the attention of the apartment security guard. Failing to break up the dispute, he called 911. According to State prosecutors, Parks' father came out and when Parks handed his father his red jacket, his father handed Parks a black pistol. Neighbors testified, however, that they had witnessed Parks arguing with Guthrie and Washington, and that Parks' father had come out and told him to stop. Guthrie got in her car to leave, but before driving out of the parking lot, she heard gunshots. After finding Washington lying in a puddle of blood, she and others called police. Washington died from multiple gunshot wounds. Police recovered 18 shell casings and four bullet fragments near the victim's body, with two more shell casings nearby. Guthrie testified that the victim did not have a gun, that he was not acting violently, and that he was trying to defuse the situation. Other witnesses testified similarly. Parks was eventually arrested and indicted for malice murder, aggravated assault and other crimes. In 2014, a jury convicted Parks of the charges, and he was sentenced as a repeat offender to life in prison with no chance of parole, plus an additional five years for possession of a firearm during the commission of a felony. He filed a motion for new trial, which the judge denied in 2015. Parks now appeals to this Court.

ARGUMENTS: Parks' attorney is asking the Georgia Supreme Court to reverse his convictions. The trial court erred in several ways, including when it limited the defense's cross

examination of a state's expert witness and when it allowed evidence of a previous conviction Parks had. Parks' attorney argues the trial attorney was not afforded a proper cross-examination of the State's forensic pathologist, and that this error violated Georgia Code 24-6-611 (b), which allows for the "right of a thorough and sifting cross-examination." The State's expert, Dr. Brian Frist, "resigned/retired in September, 2014 relating to an audit of his office as well as questions regarding his certification in forensic pathology." The trial attorney argues was denied the opportunity to cross-examine Frist regarding questions surrounding his qualifications, and the lack of proper cross-examination bolstered the jury's confidence in the witness without knowing all of the issues at hand. "The defense had a right to question Dr. Frist as to his resignation and as to how it related to his skills and credentials to explain the pathology," Parks' attorney argues in briefs. "Dr. Frist's resignation and his lack of candor regarding his retirement during his testimony can be seen in the many news articles written on the subject from, for example, WSB television, Atlanta Journal Constitution and Eleven Alive television during the spring and summer of 2014." Among other arguments, the attorney contends that the evidence presented at trial was insufficient to make a conviction, that the trial court erred by allowing in evidence of an earlier conviction in which Parks pleaded guilty to shooting a man over a drug deal, and that his attorney during trial was ineffective, in violation of his constitutional rights.
For these reasons, and others, Parks is asking this Court to reverse his convictions on appeal.

The District Attorney and Attorney General, arguing for the State, argue among other things that the trial court acted within its discretion and therefore the Supreme Court should not disrupt its ruling. In response to Parks' argument regarding the cross-examination of Dr. Frist, the State asserts that the trial attorney did not properly preserve this argument for appeal. The judge correctly sustained the State's objection to the questioning because it was irrelevant. "Even if the evidence Appellant [i.e. Parks] sought to get from Dr. Frist regarding the circumstances of his resignation could have been properly admitted, given the overwhelming evidence of Appellant's guilt…Appellant cannot show that the alleged error in excluding this evidence affected the outcome of the trial," the State argues in briefs. The trial court also correctly admitted Parks' prior conviction, the State argues. Before the evidence was introduced, the trial court held a hearing and ruled the prior conviction was admissible under the law. The evidence against Parks related to Washington's death was sufficient to find him guilty beyond a reasonable doubt of the crimes for which he was convicted, the State's attorneys argue, and his trial attorney provided constitutionally effective legal assistance. They are therefore asking the Georgia Supreme Court to affirm Parks' convictions, as they believe that the trial court acted within its authority and that Parks' enumerations of error all lack merit. "In denying Appellant's motion for new trial, the trial court found that the evidence of guilt was overwhelming, and that Appellant's convictions were proper 'under all the constitutional and statutory standards of evidentiary review for criminal cases in Georgia, including the general grounds,'" the State contends.

Attorney for Appellant (Parks): Raina Nadler
Attorneys for Appellees (State): D. Victor Reynolds, Cobb County District Attorney, Jesse Evans, Dep. Chief Asst. D.A., John Edwards, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Patricia Burton, and of the Georgia Department of Law, and of the Cobb County District Attorney's Office Asst. A.G.

2:00 P.M. Session

LAUREN FILSON V. RICHARD FILSON (S16A1073)

In this **Glynn County** divorce case, a woman is appealing a judge's ruling holding her in contempt of court and requiring her to pay more than $27,000 in back child support.

FACTS: Lauren Sydney Filson and Richard Filson divorced in September 2013. They had three minor children, C.F., who was 15 at the time, A.F. who was 13, and H.F. who was 9. A.F. was disabled and received monthly Social Security payments of $618.89, which at the time of the divorce were being paid directly into Lauren's bank account. The Final Judgment and Decree awarded the couple joint legal custody of their children with physical custody going to Richard. Lauren was ordered to pay $900 per month in child support beginning July 2013. In September 2013, when the final divorce decree was entered, she was already $600 in arrears, so the trial court ordered her to pay an additional $50 per month for 12 months to pay it off, beginning November 2013. The final decree also ordered Lauren to surrender the monthly social security checks to Richard. And it ordered Lauren, who was a member of Alcoholics Anonymous, to submit to random drug and alcohol screens. In October 2014, although they were divorced, Lauren moved back into Richard's home where she slept on the couch. She assisted with the children and contributed to certain household expenses, such as electricity, cable, groceries, clothes and car insurance. The parties dispute whether they agreed Lauren would pay for these expenses in lieu of child support. Witnesses testified they sometimes saw her giving Richard checks or cash, although they did not know the amounts. Lauren paid no rent. The parties also dispute the reason for her moving back into the home, with Richard saying she had nowhere else to go and could help him with the children. She said Richard was incapable of handling his finances and he asked her to move back in. She stayed for six months until April 2015, then moved back out. Their oldest child, then 17, went with her mother.

In May 2015, Richard's attorney filed an Application for Contempt against Lauren, and her attorney filed a response. His attorney then filed an amended contempt claim in July 2015, claiming she had failed to pay the $900 per month in child support for the past 23 months, other than a small portion; that she had failed to pay the $50 per month for 12 months, other than a small portion; that she had failed to surrender any social security checks to him; and that she had refused to submit to random drug and alcohol testing. Following a hearing, the trial court judge calculated that from the time of the divorce, she should have paid $20,700 in child support and should have surrendered to Richard $14,234.47 in Social Security payments for a total of $34,934.47. The judge deducted from that sum $7,506.41 that evidence showed she had paid toward her obligations, concluding that Lauren was $27,248.06 in arrears. The judge also found there was no evidence she had ever undergone drug and alcohol testing. In the order, the judge stated, "There is a swearing match between the parties as to whether or not there was ever any agreement whereby Mr. Filson agreed to accept her contribution in lieu of child support." The judge also found, "there is no evidence other than the assertions by the parties, which evidence is in sharp dispute, that Mr. Filson requested Mrs. Filson to pay the expenses." The court found Lauren Filson in contempt and ordered her to pay Richard $27,743.06. She now appeals to the state Supreme Court.

ARGUMENTS: Lauren's attorneys argue the trial court erred in calculating the amount she owed by failing to give her credit for the cash she had given him. Because his bank account

was often overdrawn, he was concerned that child support payments that went into the account would be used to pay creditors, so he had instructed her to pay him in cash. In March 2015, he sent a text message asking her to pay cable, cell phone, and car insurance for April in lieu of her April child support payment, which she did. She claims she paid over $41,000 to support her ex-husband and children, more than the total of her support obligation. The trial court "miscounted the number of social security disability payments issued on behalf of A.F. that were not transferred to husband," her attorney argues. The trial court also erred in concluding it lacked the legal authority to credit her payments for debts and household expenses, even when Richard admitted they were made at his direction in lieu of child support. "Because the court was mistaken in believing it lacked the discretion to apply these payments to child support, the trial court abused its discretion as a matter of law," the attorneys contend. "A trial court's authority to credit 'substituted' child support payments is well-established in Georgia." And the trial court made a mistake of law in holding that it did not appear that Lauren met any criteria for exempting her from her obligation. "Rather than making detailed findings of fact and weighing the testimony to determine the truth, the trial court defaulted to what amounts were paid exactly as ordered (two checks, twice a month) rather than looking at the conduct and dealings of the parties," the attorneys argue. "This results in a windfall for Husband, and an injustice to Wife." "Further, were the court to weigh and examine the evidence, it is apparent there would be no finding of contempt made." The state Supreme Court "should reverse the decision below, and render an opinion clarifying that under circumstances like those found in this case, trial courts do have power to grant equitable relief to prevent an injustice…."

Richard's attorney argues there was an "abundance of evidence" to support the judge's ruling, and under many court rulings, including by the Georgia Supreme Court, a trial court's ruling on a contempt motion must be upheld if there is any evidence to support it. "The simple solution for Mrs. Filson would have been to simply pay her child support and surrender the social security check to Mr. Filson. The money she alleges that she spent could just as easily have been paid according to the court order as opposed to paying other bills." The "undisputed facts are" that she did not pay the child support as ordered in the Final Judgment and Decree; she did not turn over to Richard the social security benefits she received for their child as ordered; and she did not undergo drug tests as ordered. It is also undisputed that she did voluntarily pay some household expenses for the benefit of herself, her children and her ex-husband. But, "The law in Georgia is very clear," the attorney argues. "There is no set off toward child support for voluntary payments." While parents are free to enter into an agreement to modify child support, "that agreement becomes enforceable only when incorporated in an order of the court…." If Lauren Filson can get credit for voluntarily paying some expenses for the children, Richard and herself without the court's approval, "then every non-custodial parent in this state will be filing for equitable relief for anything and everything they paid, be it a vacation, magazines for school fundraisers, cars for teenagers. The list will be endless. That is a key to Pandora's Box. Is that the intent of the law?"

Attorneys for Appellant (Lauren): Frances Dyal, Jason Clark
Attorney for Appellee (Richard): Mark McManus, Sr.

THE STATE V. SMITH (S16A1069)

State prosecutors are appealing a **Decatur County** judge's ruling that when a man goes on trial for murder, his videotaped statement in which he allegedly confessed will not be heard by the jury because the State did not prove he made his statement voluntarily as required by law.

FACTS: On Aug. 12, 2014, a Decatur County grand jury indicted Robert Lenoris Smith with felony murder, aggravated assault and possession of a firearm during the commission of a felony for causing the death of Octavius Powell by shooting him with a 9 mm pistol in Bainbridge, GA. Among pre-trial motions filed by Smith's lawyer was a "Jackson-Denno" motion asking the court to suppress a videotaped statement Smith made to investigators after they had arrested him and he was in custody. A Jackson-Denno hearing, which is named after the U.S. Supreme Court's 1964 decision in *Jackson v. Denno*, is held to determine whether a defendant's statements while in custody were "freely, voluntarily, knowingly, and understandably made and entered without any undue influence, compulsion, duress, promise of benefit, or fear of injury." It is the State's burden to prove they were. Otherwise they must be suppressed. In its motion to suppress, Smith's attorney stated that any incriminating statements Smith made "were the result of persistent and repeated interrogation by skillful law enforcement officers and in the absence of counsel and without an intelligent or knowing waiver of counsel." Following a hearing, the trial court ruled that the State had failed to prove by a preponderance of the evidence that Smith's statement had been made voluntarily, without coercion, and without any hope of reward. The District Attorney, on behalf of the State, now appeals to the Georgia Supreme Court.

ARGUMENTS: The District Attorney argues that the statement made by Smith, the "appellee," was given "freely and voluntarily, without threats or violence, or by any promises, hence the trial court erred in granting the motion." Investigator Chip Nix of the Bainbridge Department of Public Safety testified at the hearing on the motion to suppress that he participated in interviewing Smith together with Investigator Robert Humphrey. Nix said Smith was read his *Miranda* rights, and he identified the statement signed by Smith waiving his right to an attorney and his right to remain silent. He also identified Smith's videotaped statement, which was marked as "State's exhibit JD-2." Nix testified that at no point prior to, or during, the interview was Smith threatened by him or any other law enforcement officer. He testified that Smith's statement was voluntary and was captured on the video as his *Miranda* rights were read to him; that Smith never requested an attorney; and that he was never offered any hope of benefit or reward if he gave a statement. On cross-examination by Smith's attorney, Nix said he could not recall what time of the morning Nix was brought to the police station, but he did not observe any sign of impairment or sleep deprivation on Smith's party. While he did not inquire whether Smith had slept the night before or eaten the day before, he had observed Smith's demeanor and saw no shortcomings. He said the interview lasted about an hour and 23 minutes. Nix denied during cross-examination that he ever told Smith's brother, Jontavious Smith, that Smith would be charged with capital murder if he didn't cooperate. When asked if he had said to Smith, "You better hope that he is not dead," Nix testified he didn't need to say that because Investigator Humphrey had told Smith at the beginning of the interview that Powell had died. "Based on the foregoing uncontroverted evidence, the State submits that it proved by a preponderance of evidence that Appellee's custodial statement was freely, voluntarily, knowingly, and understandably made without threats, promise of benefit or fear of injury," the State argues in

briefs. “The trial court erred in failing to admit in evidence State’s exhibit JD-2 which is the video of the custodial interview of Appellee.” While Georgia law requires that an exhibit be authenticated before it may be admitted, the State contends the videotape was authenticated “because Investigator Nix who was present during the custodial interview of Appellee, testified that he took part in the interrogation of Appellee on May 21st, 2014 and that the interrogation was videotaped; that the videotape was State’s exhibit JD-2; and that he had auditioned State’s exhibit JD-2 earlier that morning in anticipation of hearing.” Had the trial judge admitted the videotape and viewed it, “it would have aided the trial court in making an informed decision regarding the voluntariness of Appellee’s custodial statement. Hence the State was prejudiced by the trial court’s failure to admit same in evidence, because the result would have been different had State’s exhibit JD-2 been admitted and auditioned by the trial court.” The State is asking this court to reverse the trial court’s ruling granting Smith’s motion to suppress the evidence.

Smith’s attorney argues the trial court ruled correctly because the State “failed to satisfy its burden of proving by a preponderance of the evidence the admissibility of appellee’s alleged confession.” The State had the opportunity at the Jackson-Denno hearing prior to trial to present all its evidence, but it failed to do so. Although Nix’s testimony at the hearing revealed that during Smith’s interview, there not only was a second investigator – Humphries – and possibly a third, “neither of these officers was present to testify at the Jackson-Denno hearing,” the attorney argues. The missing witnesses “were indispensable to a finding that the Appellee’s statements were voluntarily made.” The trial court was authorized to find that Smith was denied the right to fully investigate all the circumstances surrounding his alleged confession by having the opportunity to hear the testimony of all of the witnesses. The trial court correctly concluded that upon assessing the totality of the circumstances surrounding Smith’s alleged confession, the State failed to provide evidence that he had made his statement voluntarily. Nix was asked during cross-examination whether he recalled saying to Smith during the interview that if he cooperated, Nix would be willing to tell the victim’s father that Smith had showed remorse. Nix responded: “I don’t know. If I did, it’s on the video.” The judge could have considered his response “evasive,” and “it is reasonable to conclude that the court gave due consideration to the issue of whether this witness was credible,” Smith’s attorney argues. “A review of Investigator Nix’s testimony clearly raises questions as to his credibility.” The court did not err in refusing to admit the videotaped statement. Despite the fact that Nix claimed he had viewed the videotape the morning of the Jackson-Denno hearing, “he could not recall if the Appellee was questioned about whether he had any sleep or food before the interview or asked for something to drink or to go to the bathroom during the interview.” And Nix couldn’t remember if he’d promised to tell the victim’s father Smith was remorseful if Smith agreed to make a statement. “In view of the foregoing responses of Investigator Nix and his inability to recall events that were supposed to have been recorded during the custodial interview of Appellee, Appellee contends that the trial court was authorized to conclude that the Appellant [i.e. the State] had failed to authenticate State’s exhibit JD-2,” Smith’s attorney argues.

Attorneys for Appellant (State): Joseph Mulholland, District Attorney, Moruf Oseni, Asst. D.A.

Attorney for Appellee (Smith): Chevene King, Jr.

IN RE: VERONICA BRINSON (S16A1029)

In this **Bibb County** case, an attorney removed from representing a man charged with murder, is appealing a judge's order finding her in criminal contempt.

FACTS: Veronica Brinson, a licensed lawyer in Georgia since 2000, was hired by Frank Louis Reeves and his family following his arrest for murder in December 2012. Reeves, 74, was charged with killing Linda Hunnicutt, 65. He was indicted in February 2013 for murder and aggravated assault. Bibb County Superior Court Judge Howard Z. Simms was assigned to the case. In the summer of 2013, Judge Simms ordered that Reeves get a mental evaluation. Judge Simms later found that Brinson failed to give the court timely notice that she intended to raise the issue of insanity or mental incompetency of Reeves. Also, the judge found she filed an improper notice under Uniform Superior Court Rule 31.6 and filed untimely notices of insanity and self-defense, violating the rules and procedures of the Uniform Superior Court Rules. And the judge indicated she had failed to adequately investigate physical evidence in the case that the Bibb County Sheriff's office had in its custody. In August 2014, Brinson filed a motion to have Simms recused from the case. On Sept. 10, 2014, Chief Judge Tilman Self, III denied her motion as meritless. On Friday, Sept. 12, 2014, Judge Simms sent an email to Brinson asking her to attend an emergency meeting in his chambers on Monday, Sept. 15, the day before Reeves' trial was to begin. At a hearing in his chambers, Judge Simms informed Brinson he intended either to appoint co-counsel to try the case with Brinson or to remove her entirely from the case if she refused to work with co-counsel. He told Brinson she had missed three deadlines for presenting an insanity or diminished capacity defense and she had failed to look at the State's physical evidence in a timely fashion. Brinson stated that she had been trying to get assistance from other lawyers, that she was hoping for a continuance, and that she wanted to appeal the denial of her motion to recuse Judge Simms. The next day, Judge Simms entered an order appointing the Public Defender's Office to represent Reeves, and on Sept. 17, 2014, Judge Simms issued an order that removed Brinson as Reeves' counsel, finding she had rendered "ineffective assistance of counsel" to Reeves, in violation of his constitutional rights. At the end of that "Notice of Appointment of Substitute Counsel," Judge Simms stated that, "The clerk will accept no filings or other documents prepared by or for Ms. Brinson in this matter without the express authority of appointed counsel or the court." On Sept. 18, he issued an "Amended Notice of Appointment of Substitute Counsel," in which he ordered, "Ms. Brinson is directed to submit no filings or other documents to the clerk of court in this matter without the express authority of appointed counsel or the court." Nevertheless, Brinson filed several documents during the next few days without getting the court's or the new counsel's consent, including notice that she planned to appeal the judge's appointment of the Public Defender's Office to represent Reeves, and a Notice of Appeal and a request for immediate review of the order removing her as Reeves' lawyer.

On Sept. 26, 2014, Judge Self entered a "Citation of Criminal Contempt" against Brinson, which identified 10 possible acts of criminal contempt. Following a hearing on the contempt charges in December 2014, Senior Judge John D. Allen found Brinson in contempt for three of the allegations, namely for filing three documents in Reeves' case after the court had ordered her to make any further filings. Brinson was sentenced to confinement for four days on each count, provided that the confinement would be suspended upon her payment of $250 on each count.

Brinson appealed, and the Georgia Court of Appeals initially issued an opinion upholding the lower court's ruling. But it later vacated that opinion and transferred the case to the state Supreme Court, which has jurisdiction over all pre-conviction appeals in murder cases, including appeals from contempt orders. As a result, the case is now before the high court.

ARGUMENTS: In briefs, Brinson, representing herself pro se, enumerates a number of errors that have been made in her case. Among her contentions: Judge Self lacked standing and the authority to issue the citation for contempt because it was Judge Simms' order that she allegedly violated; the order preventing her from filing documents without the court's permission illegally denied her access to the courts; the trial court violated her right to due process by failing to give her adequate notice that it intended to remove her as Reeves' lawyer; the contempt citation was issued prematurely given that Judge Self previously resolved such matters by "less draconian methods"; and Brinson's conduct was not willful and not punishable by contempt.

In response, the District Attorney argues for the State that Judge Self had the authority to issue the contempt citation because when Brinson violated Judge Simms' order, Judge Simms voluntarily recused himself from Reeves' case; the order preventing Brinson from filing documents does not deny Reeves access to the courts because he will be capably represented by the public defender and Brinson has no legal right to represent Reeves; the trial court did not violate Brinson's right of due process because Brinson also has no legal right to be notified of the trial court's intent to remove her as counsel; Brinson's belief that Judge Self always resolves disputes between lawyers "by less draconian methods" is not supported by the record; and finally, the record shows that Brinson intentionally violated the court's order and Judge Allen correctly found her to be in contempt.

Attorney for Appellant (Brinson): Veronica Brinson, pro se
Attorneys for Appellee (State): K. David Cooke, Jr., Jason Wilbanks, Asst. D.A.