



## Supreme Court of Georgia

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## CASES DUE FOR ORAL ARGUMENT

### Summaries of Facts and Issues

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**Monday, January 9, 2017**

### **10:00 A.M. Session**

#### **JACKSON V. THE STATE (S16G0888)**

A convicted sex offender is appealing a ruling by the Georgia Court of Appeals that upheld his conviction in **Houston County** for failing to register as a sex offender. He argues the indictment was defective and therefore the judge should have directed a verdict in his favor.

**FACTS:** In June 2004, Prentiss Ashon Jackson pleaded guilty to one count of Statutory Rape. Under Georgia Code § 42-1-12, as a convicted sex offender, Jackson was required to register with the sexual offender registry, which he did, listing an address in Houston County where he lived in Warner Robins. Jackson knew that under state law, if he moved from that address, he had to register his new address within 72 hours. In June 2011, Houston County officers were unable to contact Jackson at his Warner Robins address. They subsequently learned he had moved to Macon in Bibb County and was living with his girlfriend. Jackson had not registered the new address and was arrested in January 2012. At a preliminary hearing, he admitted he had moved to Macon because his home in Warner Robins had no electricity or water.

In the indictment, a Houston County grand jury charged Jackson with “failure to register as a sex offender,” stating in the indictment that Jackson “did fail to register his change of address with the Houston County Sheriff’s Office within 72 hours of the change as required

under Official Code of Georgia Annotated § 42-1-12.” During trial, Jackson’s defense attorney made an oral motion asking the court to direct a verdict in his favor, arguing the indictment was defective because it failed to allege that Jackson was a convicted sex offender and that he was required to register under the statute. The trial judge denied his motion. In June 2012, the jury returned a verdict of guilty of failing to register as a sex offender, and Jackson was sentenced to 30 years, to serve six in prison without the possibility of parole and the remaining 24 years on probation. Jackson appealed to the Court of Appeals, which concluded that the indictment was not “fatally defective” because it charged Jackson with violating a specific penal statute and incorporated the terms of the Code section. “Jackson could not admit that his acts violated § 42-1-12, i.e., that he failed to register as a sex offender, and still be innocent of the charged offense,” the appellate court ruled. “Because the evidence supported Jackson’s conviction, the trial court properly denied his motion for a directed verdict.” Jackson now appeals to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in finding that Jackson’s indictment was not defective.

**ARGUMENTS:** Jackson’s attorney argues the Court of Appeals erred in finding that the indictment was not fatally defective. “The indictment was defective because it failed to allege all of the essential elements of the named crime of failure to register as a sex offender,” the attorney argues in briefs. The indictment did not allege that Jackson “had been convicted of any offense requiring registration, that he was actually required to register, or that he was a sex offender.” “Because the indictment in this case omitted essential elements of the crime, the indictment was fatally defective, and the Court of Appeals’ finding to the contrary was error.”

The District Attorney argues for the State that the Court of Appeals correctly affirmed the trial court’s decision based on the sufficiency of the indictment. “The test for determining whether an indictment can withstand a general demurrer is whether as a result of the omission of an element, the indictment fails to charge any crime at all,” the State argues in briefs. Here, the indictment alleges that Jackson failed to register his change of address with the Houston County Sheriff’s Office within 72 hours of the change, thereby failing to comply with the requirements of § 42-1-12. Furthermore, a defendant cannot admit to the allegations and still be found not guilty. “An accused cannot admit an allegation that his acts were ‘in violation of’ a specified code section and yet not be guilty of the offense set out in that code section.” The only question for the jury in Jackson’s case “was what the indictment alleged, i.e., that he had changed his address, that more than 72 hours had elapsed since this change of address and that he had not notified the appropriate authorities in a timely fashion of his current address,” the State argues. “If there is any error in not having included Appellant’s (i.e. Jackson’s) conviction for the offense of Statutory Rape by a guilty plea entered on June 2, 2004, it is harmless error.”

**Attorney for Appellant (Jackson):** Russell Walker

**Attorneys for Appellee (State):** George Hartwig, III, District Attorney, Marie Banks, Asst. D.A.

### **RESURGENS ORTHOPAEDICS, ET AL. V. ELLIOTT (S16G1214)**

In this **Fulton County** medical malpractice case, an orthopedic surgeon and his medical practice are appealing a Georgia Court of Appeals decision, arguing the appellate court was wrong to reverse a jury’s verdict in their favor and order a new trial.

**FACTS:** In 2009, Dr. Tapan K. Daftari performed spinal surgery on Sean Elliott at Wellstar Kennestone Hospital after diagnosing him with degenerative disc disease. The surgery went as planned with no complications and Elliott was discharged within three days. About two weeks later, Elliott's fiancé arrived home to find him "unconscious or in an altered state of consciousness." He was rushed to the emergency room and placed on a ventilator in "very critical condition." Cultures revealed his surgical wound was infected, and he was admitted to the hospital for post-operative treatment. On Dec. 16, 2009, Daftari performed a drainage procedure to clean out any infections in Elliott's surgical wound and neck. On Dec. 19, Elliott underwent another surgery to ensure nothing was collecting in his spinal cord and for final closure of his wound. According to hospital records, on Dec. 21, 2009, Daftari operated on another patient from 8:09 a.m. until 11:03 a.m. and later visited Elliott's hospital room at around 11:30 a.m. At that time, Daftari discovered Elliott had decreased movement in his legs but did not consider it an emergency. Nevertheless he ordered that a cervical magnetic resonance imaging (MRI) be done "as soon as possible." While waiting for the results, Daftari performed a second surgery on a different patient that lasted nearly five hours and concluded at 5:30 p.m. At 5:20, a nurse notified Daftari that Elliott's temperature was increasing and his inability to move his lower extremities was worsening. After learning that the first MRI was negative, Daftari ordered a second of Elliott's thoracic and lumbar spine. That test showed a dangerous expansion of Elliott's spinal cord. After consulting with a neurosurgeon, Daftari performed a thoracic laminectomy to make more room for Elliott's expanding spinal cord. In doing the operation, which began at 9:30 p.m. and ended at midnight, Daftari discovered an abscess on Elliott's spinal cord. Despite the surgery, Elliott was unable to recover any neurologic function, and he was permanently paralyzed from the waist down.

About two years later, in December 2011, Elliott filed a medical-malpractice lawsuit against Resurgens and Daftari, alleging that his paralysis was caused by Daftari's negligent treatment of his post-operative spinal infection. Resurgens and Daftari denied liability. Following an extended "discovery" – the pretrial process during which the parties disclose documents and information about their case in response to the opposing side's questions – the case proceeded to jury trial.

A key issue in this case was the time at which Daftari first became aware of Elliott's decreased ability to move his legs. Elliott's malpractice claim was based entirely on Daftari's alleged delay in recognizing, investigating and treating his thoracic abscess. The evidence about the timing was conflicting. Hospital records reflected that Daftari was in the operating room continuously the morning of Dec. 21, 2009 from 8:09 a.m. until 11:03 a.m. Additionally he testified he was unaware Elliott was experiencing decreased movement in his legs until after that surgery when he first saw him that day at around 11:30 a.m. But a nursing entry in Elliott's electronic hospital records stated Daftari was at Elliott's bedside at 9 a.m. on Dec. 21 and learned then that Elliott could not move his lower legs.

When Daftari testified during cross-examination that he had not been at Elliott's bedside at 9 a.m., Elliott's attorney attempted to call nurse Savannah Sullivan as his next witness. Sullivan was prepared to testify that she had been with Daftari at Elliott's bedside at 9:00 a.m. on Dec. 21, 2009, and that Daftari had become aware at that time that Elliott was unable to move his legs. Daftari's attorneys objected to allowing Sullivan to testify, arguing her name had not been disclosed during discovery and was not listed in the Pretrial Order. The trial judge granted

Daftari's motion to exclude Sullivan's testimony "to allow for a trial to proceed without surprise, without ambush."

Following the 2015 trial, the jury returned a verdict in favor of Daftari and Resurgens. Elliott then appealed to the Court of Appeals which reversed the decision and ordered a new trial, ruling that Sullivan's testimony should not have been excluded "because doing so was not an appropriate remedy for Elliott's alleged failure to properly comply with discovery." The appellate court ruled that the exclusion of "probative" evidence – or evidence that tends to prove or disprove something – "is not an appropriate remedy for curing an alleged discovery omission." Daftari and Resurgens now appeal to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals was wrong to reverse the trial court's decision.

**ARGUMENTS:** Attorneys for Resurgens and Daftari argue the Court of Appeals erred, and the trial court was right to exclude Sullivan's testimony because Elliott "provided evasive and incomplete discovery responses." In response, the trial court appropriately sanctioned Elliott by excluding Sullivan's testimony. "The trial court's decision to prevent surprise and ambush in trial, and impose the proportional sanction of excluding the surprise witness was squarely within the trial court's authority under Georgia Code § 9-11-37 to sanction discovery abuses and the court's authority under Georgia Code § 9-11-16 to control the course of trial pursuant to a Pretrial Order," the attorneys argue in briefs. The appellate court erred in finding that "exclusion of probative trial evidence is not an appropriate remedy for curing an alleged discovery omission" even when "there is no excuse for a party's failure to 'faithfully engage in discovery.'" "This holding is directly contrary to the plain language of the Georgia Civil Practice Act and the intent of the Georgia Legislature to eliminate trial by ambush from civil practice in this state and 'secure the just, speedy and inexpensive determination of every action,'" Resurgens' attorneys argue. "This Court must now answer a basic question of civil procedure – does a trial court have the power to exclude a witness from testifying at trial as a remedy for discovery abuses or violation of the Pretrial Order. The plain language of the Georgia Civil Practice Act clearly grants a trial court this power in multiple sections." Sullivan's name appears in the medical chart only once, and the entry was made at 10 a.m., not 9. It made no mention of Elliott's neurological condition nor did it reference Daftari being present. "Thus there was nothing in the chart that would alert defendants that, more than five years later, she would testify to being with Dr. Daftari at the patient's bedside earlier that morning." The trial court did not abuse its discretion in excluding Sullivan's testimony because Elliott's attorneys "intentionally withheld Ms. Sullivan's name from discovery in order to ambush defendants at trial," the attorneys contend. In addition to the discovery abuses, "plaintiff's failure to list Ms. Sullivan as a witness on the Pretrial Order is a sufficient, independent ground for excluding Ms. Sullivan's testimony," Daftari's attorneys argue. "The basic purpose of a Pretrial Order is to prepare a case for trial by limiting and simplifying the issues and the evidence."

Elliott's attorneys argue the Court of Appeals made the correct decision in reversing the trial court's judgment and ruling that Sullivan's testimony could not be excluded as a discovery sanction. "Sullivan's exclusion cannot be justified, either as a discovery sanction or as a sanction for any violation of the Pretrial Order," the attorneys argue in briefs. Precedent-setting decisions from the state's highest court make clear that merely refusing to fully answer every question asked during discovery will not justify "shortcut" sanctions. "[N]othing less than a **serious or**

**total failure to respond** to interrogatories’ will justify immediate sanctions,” they argue, citing the Georgia Supreme Court’s 1979 decision in *Mayer v. Interstate Fire Ins. Co.* “Elliott’s responses were not evasive or incomplete, let alone affirmatively misleading,” they contend. Furthermore, when witnesses are called at trial who have not previously been identified, the proper procedure is “postponement of the trial for a sufficient length of time to enable [the other party] to interview them, check facts and to seek rebuttal evidence or evidence to impeach them.” The Court of Appeals correctly interpreted the exclusion of Sullivan’s testimony as a discovery sanction only, while the defendants argued it was also a sanction for violating the Pretrial Order. But the Pretrial Order allowed any “person named in the medical records” to be called as a witness. “Sullivan was undisputedly a “person named in the medical records.”

**Attorneys for Appellants (Resurgens):** Paul Weathington, Tracy Baker, David Hanson  
**Attorneys for Appellee (Elliott):** Andy Clark, Eric Hertz

### **THE STATE V. RIGGS (S16G1166)**

The State is appealing a ruling by the Georgia Court of Appeals that threw out the sentences of a man who pleaded guilty in **Chatham County** to multiple child sexual offenses involving his 12-year-old daughter.

**FACTS:** According to the facts presented at court, on June 4, 2008, Darren Riggs approached a number of people in a hot tub at the Fenwick Village apartment complex in Chatham County. Among them were William Blackburn and Joseph Stroup, two Army reservists. Riggs invited the men back to his apartment to do cocaine. After giving Blackburn a line of cocaine, Riggs took Blackburn to his bedroom where his 12-year-old daughter was asleep. Riggs pulled back the sheets, exposing the naked child, and asked Blackburn if he “wanted some of that.” Blackburn said no and retreated to the balcony. Riggs also offered his daughter to Stroup, separating her legs to expose her private parts. He too declined and both men left the apartment. Disturbed by what they had seen, the two men returned to the apartment to get identifying information so they could report the abuse. This time, Riggs brought his daughter from the bedroom dressed in a black dress and high heels. She appeared confused, and when her father instructed her to do a line of cocaine, she did so. The men noted it was apparent the 12-year-old had done cocaine before. Pornography was on the television, and Riggs instructed the girl to lie down on an air mattress in front of the TV, continuing to offer his daughter to the men by lifting her skirt and asking if they wanted oral sex. Blackburn and Stroup eventually left and went to police. Riggs’ daughter was later found to have cocaine in her system and eventually admitted she’d been frequently sexually abused by her father, who forced her to have sexual intercourse, oral sex and anal sex with him. In a recorded conversation, Riggs admitted he’d had sexual intercourse with his biological daughter.

Central to this case is Georgia Code § 17-10-6.2 (b), which requires that anyone convicted of a sexual offense must be sentenced to a “split sentence” – which includes at least the minimum term of imprisonment for the particular offense, but as part of the sentence, at least one year of probation following prison. Specifically the statute says that “any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment...No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year.”

In August 2010, Darren Riggs pleaded guilty in Chatham Superior Court to a number of offenses. He was sentenced to nine counts that came under the “punishment for sexual offenders” statute: seven counts of child molestation, one count of enticing a child for indecent purposes, and one count of statutory rape. The minimum sentence for child molestation is five years with a maximum of 20; for enticing a child for indecent purposes, it’s 10-to-30 years; and for statutory rape, if the person convicted is over 21 years old, it’s 10-to-20 years. Riggs was also convicted of cruelty to children, distribution and delivery of cocaine, and false statements. In total, Riggs was sentenced to 50 years, with 30 to be served in prison. His sentences for the sex offenses were as follows: 20 years to serve all 20 in prison for child molestation; a consecutive term of 20 more years for enticing a child, with 10 of those in prison and the balance on probation; six terms of 20 years each for five counts of child molestation and one count of statutory rape to be served concurrently, or at the same time, as the first count of child molestation; and another concurrent sentence of 20 years with 10 in prison and the remainder on probation for child molestation that was reduced from aggravated child molestation. Riggs later filed a motion to withdraw his guilty plea, but the trial court denied it and on appeal, the Court of Appeals upheld the lower court’s ruling. Riggs then filed various motions and appeals, including a “Motion to Reduce Sentence,” in which he argued a number of things, including that his sentence violated Georgia Code § 17-10-6.2 (b) because he did not receive split sentences for each of his sexual offenses. The trial judge dismissed the motion. Again Riggs appealed to the Court of Appeals, which agreed with Riggs on the issue of his sexual offense sentences, ruling that the trial court failed to impose the split sentence required under § 17-10-6.2 and remanding the case to the trial court for resentencing. It found that the statute required the trial court to impose a split sentence for each of the sexual offenses but had failed to do so for seven of the nine of them. The State now appeals to the Georgia Supreme Court.

**ARGUMENTS:** The District Attorney of the Eastern Judicial Circuit (in Savannah), representing the State, argues the Georgia Court of Appeals erred in finding that under the statute a convicted defendant must receive an individual split sentence for each sexual offense as opposed to an overall split sentence for multiple offenses. “Further, the Georgia Court of Appeals finding creates a legal absurdity, strips trial courts of sentencing discretion, limits the sentence length a sexual offender may receive, and contradicts the General Assembly’s intent in creating the statute,” the District Attorney argues for the State. The split sentence requirement of the statute “applies to the overall sentence, not each offense subject to the Code section.” The Court of Appeals’ interpretation of the statute leads to absurd results and has “essentially eradicated a trial court’s ability to issue consecutive sentences because there is no sentencing mechanism in place for numerous split sentences to be executed.” If allowed to stand, trial courts will be forced to issue only concurrent sentences. If multiple independent split sentences are required, “wholly absurd consequences and impracticalities would result,” the State contends. A defendant would have to serve time in prison, be released a year on probation, then returned to prison to begin the next split sentence. The Court of Appeals’ interpretation of the statute also undermines the intent of the General Assembly in passing the statute and ignores the harm the statute is intended to remedy. The legislature’s intent “was to ensure that sex offenders would not be released into the community without some form of supervision,” the State argues. The intent “was to protect the public against a class of offenders whose recidivism rate is extremely high and whose crimes are detrimental to their victims.” The State also argues that while “it is the task

of the legislature, not the courts, to define crimes and set the ranges of sentences, *where a sentencing scheme is wholly irrational, it is subject to judicial review.*” If the eventual interpretation by the Georgia Supreme Court is not as the legislature intended, “the legislature can then amend the statute with clearer language.” This Court should reverse the Court of Appeals decision and rule that when there is more than one applicable offense, a split sentence is only required as to one of the offenses,” the State contends.

An attorney acting as a “friend of the court” who has filed an amicus brief on behalf of Riggs, argues the state Supreme Court should affirm the Court of Appeals’ ruling. While the split-sentence statute may present “practical problems” in its administration when a defendant is convicted of multiple sexual offenses, they are “problems for the General Assembly to address, not the courts,” the attorney argues. The dispute here is whether the statute requires a split sentence on each sexual offense conviction, as the appellate court held, or an aggregate split sentence when a defendant has multiple sexual offense convictions, as the State contends. “Canons of legal construction and principles of English usage both point to the former,” Riggs’ advocate argues. “The split-sentence provision refers to *a sexual offense* in the singular on which defendants are to be sentenced and for which they must receive the mandatory minimum applicable to *the offense*. And while the split-sentence provision may pose problems, administrative difficulties should not override the provision’s plain meaning.” Even if the State’s interpretation of the statute were plausible, “this Court should still prefer the reading favorable to defendants. That is the reading adopted by the Court of Appeals. If that reading leads to results that the General Assembly would prefer to avoid, the General Assembly can redraft the provision, as it appears to be doing already.” In proposed legislation, “the period of probation shall not begin until the defendant has completed service of the confinement portion of the sentence *even when consecutive sentences are imposed wherein one of the sentences requires a mandatory period of probation.*” It would not due for this Court to disrupt the legislative process, not “where the provision is clear, workable, and favorable to the liberty of defendants,” the attorney argues. Even if difficult to administer, the split-sentence provision is not “absurd.” Also, the provision does not “illegally curtail judicial discretion,” the attorney argues. Superior courts can still impose the maximum sentence for any conviction of a sexual offense. For instance, the court could impose the maximum 20-year sentence for child molestation; the statute demands only that one of those years be probated. “A superior court could still impose consecutive sentences for discrete sexual offenses,” the attorney argues. “It just may not care for the results. Sentencing policy, however, is for the General Assembly to set, not the courts.”

**Attorneys for Appellant (State):** Margaret Heap, District Attorney, Christine Barker, Asst. D.A., Lyndsey Rudder, Asst. D.A.

**Attorney for Appellee (Riggs):** Amicus, Brandon Bullard

### **CLAYTON COUNTY V. CITY OF COLLEGE PARK ET AL. (S17A00076)**

**Clayton County** is appealing a superior court ruling that was in favor of the City of College Park, which sued the County for failing to give it half of all alcohol tax revenue collected at Hartsfield-Jackson Atlanta International Airport. The City claims the County owes it about \$2.5 million collected during the last 30 years.

**FACTS:** This case involves a dispute between Clayton County and the City of College Park over the proper collection and allocation of alcohol taxes at the Atlanta airport. The airport

is owned by the City of Atlanta but is located primarily within the geographic limits of Clayton County. A sizable portion is located in an area of Clayton County that is incorporated within the limits of College Park, but some airport structures sit in unincorporated sections of the County.

In 1983, the Georgia legislature enacted Georgia Code § 3-8-1 (e) as part of the Alcoholic Beverage Code. It states that the “proceeds of the taxes which the county and the municipality are authorized by law to impose and collect on the sale, storage, and distribution of alcoholic beverages at the airport shall be equally divided by the county and the municipality.” For more than 30 years since the enactment of § 3-8-1, Clayton County and College Park had a policy by which distributors and vendors of alcoholic beverages at the Atlanta airport remitted one half of the arising excise tax revenues to the County and one half to the City. The City now argues this approach technically never did comply with the requirements of the Constitution and the Code as each was “collecting” such monies outside its authorized jurisdiction. Nevertheless, each government received one half of the tax monies.

However, in February 2014, the County sent a letter to all the airport’s alcohol distributors and vendors instructing them not only to remit to the County 50 percent of the taxes from the sale of distilled spirits in portions of the airport situated within College Park’s limits, but also to remit *all* taxes from the sale of distilled spirits in sections of the airport situated in unincorporated areas of Clayton County. The City objected and solicited an opinion from the state Attorney General. In a July 2014 letter, the Attorney General’s Office responded that “Clayton County is not authorized to impose a tax on alcoholic beverages at the same location where the City of College Park is authorized to impose such a tax.” It also noted that Georgia Code § 3-8-1 (e) “plainly provides that the proceeds of the taxes on the sale, storage, and distribution of alcoholic beverages at the Airport are required to be divided equally between the City of College Park and Clayton County.” The City forwarded the letter to the County and requested that it remit the amount of alcoholic beverage tax monies it had wrongfully collected and retained since § 3-8-1 became effective in 1983.

When the County did not respond, the City sued in March 2015. The complaint contained 14 counts, including a request for a “declaratory” judgment from the court, seeking a determination as to the lawful method for the collection of alcoholic beverage taxes as well as the proper division of future revenues between College Park and Clayton County. The City asked the court to declare that all collected airport alcoholic beverage tax monies were to be equally divided between College Park and Clayton County, including those from parts of the airport in unincorporated areas of the County, and that Clayton County was precluded from collecting taxes arising from airport alcoholic beverage transactions that occur in College Park’s limits. College Park filed a motion asking the court for “summary judgment” on the declaratory judgment counts. A court grants summary judgment upon deciding that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. Clayton County filed a motion requesting a “judgment on the pleadings,” asking the court to rule in its favor based on the formal written statements of its claims and defenses. Following a hearing, in October 2015, the trial court issued an order denying the County’s motion and granting the City’s. The County now appeals to the State Supreme Court.

**ARGUMENTS:** The County’s attorneys argue the trial court made a number of errors in ruling in the City’s favor, including that the County is shielded from lawsuits seeking a declaratory judgment based on sovereign immunity, the doctrine that bars lawsuits against

government bodies. Under the Georgia Constitution, only the General Assembly is authorized to waive sovereign immunity, and it did not do so in this case. Also, the City's claim is barred due to "the passage of time and the natural loss of relevant witnesses, records and other documents that might shed light on this issue," the attorneys contend. "In this case, the City is asking the Court to go back 32 years." In addition, Georgia Code § 36-11-1 states that "All claims against counties must be presented within 12 months after they accrue...." So even if the City's lawsuit were not barred by sovereign immunity and the length of time, it would be barred by the statute of limitations. The trial court also erred in finding that Georgia Code § 3-8-1 (e) requires an equal division of all alcohol revenues from the airport as a whole. "The Constitution requires a different result," the County's attorneys argue. Georgia's Constitution "precludes municipalities from collecting taxes from outside their corporate limits. Since the City of College Park is constitutionally prohibited from the collection of taxes from outside its corporate limits, § 3-8-1 (e)...must be construed to mean that any alcohol taxes originating outside its corporate limits may not be received or collected by the City." The County's lawyers contend that "under existing law, Clayton County is entitled to one half of all alcohol revenues derived from within the corporate limits of College Park and is entitled to all of such revenues derived from outside those corporate limits."

Attorneys for the City argue the County's position conflicts not only with College Park's position, but also with the position of the Attorney General's Office and the trial court. Sovereign immunity does not shield the County from College Park's claims for relief. "College Park filed suit to challenge a governmental entity's infringement on its taxation power, an essential right of a municipality arising under the Constitution," the attorneys argue in briefs. "The Constitution cannot be understood to afford Clayton County sovereign immunity from violations of its provisions. Thus, sovereign immunity does not apply." Furthermore, one purpose of the Constitution's grant of sovereign immunity to the government is "the protection of the public purse." "It is illogical that an immunity designed to preserve public funds would shield one government from suit brought by another government to protect its public funds," the City's attorneys argue. The City's lawsuit also is not barred based on the amount of time that has gone by. Had the County not changed course in 2014 by trying for the first time to collect all the alcohol taxes from the unincorporated areas of the airport, the arrangement between the two governmental bodies likely would have continued. "Clayton County and College Park are equally responsible for the delay in the proper application of the constitutional and statutory mandate as they mutually agreed to the collection policy used for three decades." The trial court's grant of summary judgment to College Park also did not violate Georgia's separation of powers, as the County argued in contending that the legislature, and not the courts, has exclusive power over tax-related disputes. "College Park's declaratory judgment claims sought an interpretation of Constitutional provisions and tax statutes," the City's attorneys argue. "This is a well-established function of the courts."

**Attorneys for Appellant (County):** Richard Carothers, Thomas Mitchell, Amy Cowan

**Attorneys for Appellees (City):** Steven Fincher, Winston Denmark, Emilia Walker, Eugene Smith, Jr.