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

CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, February 7, 2017

10:00 A.M. Session

CITY OF RICHMOND HILL ET AL. V. MAIA (S16G1337)

This pre-trial appeal stems from a wrongful death lawsuit brought against a police officer and the City of Richmond Hill by the mother of a 14-year-old girl who committed suicide several weeks after the officer showed his own child photographs of the girl's self-inflicted injuries from a previous suicide attempt.

FACTS: On Feb. 14, 2011, Laura Lane Maia's 14-year-old daughter, Sydney Sanders, attempted suicide by cutting her neck and stabbing her chest and abdomen. Lt. Dana Strickland and Sgt. Douglas Sahlberg, officers with the Richmond Hill Police Department in **Bryan County**, responded to the hospital call to investigate because Sydney did not initially acknowledge that the wounds were self-inflicted. Strickland took four photos of Sydney's injuries. While she was in the hospital, news of her suicide attempt spread at her high school. According to her boyfriend, "everybody knew after a couple of days what happened. On Feb. 23, the day she was released from the hospital, she met with friends and told them they had one opportunity to ask her about the incident, but that she did not want to discuss it after that. Sydney disclosed to her friends that she had cut herself in the neck, abdomen and chest. Several days later, Officer Sahlberg's daughter, K.S., who attended school with Sydney, expressed concern to her father about why someone like Sydney would attempt suicide. Concerned that his daughter

did not appreciate the finality of suicide and might actually copy Sydney by hurting herself, he logged into his password-protected work computer and showed K.S. the photos he had taken of Sydney's injuries. Sahlberg later testified that he did not print the photos for her, allow her to copy them, or show them to anyone else. But one of Sydney's classmates said that K.S. showed her and at least two other classmates photos of the injuries to Sydney's breast and abdomen. When Sydney returned to school at the end of February, and learned that the photos of her had been shown among her classmates, she was "mortified" and "screaming and yelling and gasping for breath and crying," her mother said. On April 1, 2011, Lt. Strickland learned that Sahlberg had shown the photos to his daughter and that she in turn had told others about them. Strickland informed Sahlberg he'd violated department policy in disclosing the pictures, and he was subsequently disciplined for the infraction. On April 5, 2011, Sydney stated to her mother and her coach and mentor, Angie Hummeldorf, that "she didn't want to be here anymore," and wished her suicide attempt had been successful. Hummeldorf privately asked her why and Sydney expressed several frustrations, including that "those pictures are going around." After the discussion, Hummeldorf told Sydney's mother that the girl "wasn't doing so good" and should not be left alone. Later that night, while Sydney was at home and her mother was still at work, mother and daughter talked by phone at 7:49 p.m. Maia later said she was not concerned that Sydney was going to harm herself. When Maia returned home less than an hour later, she found her daughter had committed suicide by hanging herself.

In September 2014, Maia filed suit in Bryan County Superior Court against the Mayor and City of Richmond Hill, and against Sgt. Sahlberg in his individual and official capacities, seeking compensatory and punitive damages for wrongful death, intentional infliction of emotional distress, invasion of privacy and for the girl's pain and suffering. In response, the City and Sahlberg filed a motion asking the court for "summary judgment" in their favor. A trial 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. In 2015, the trial court denied their motion, finding there remained questions of fact that should be determined by a jury. The City and Sahlberg appealed to the Georgia Court of Appeals, which in March 2016 reversed the trial court's denial of summary judgment on all of Maia's claims except the wrongful death claim against the City, and the wrongful death, survival, and punitive damage claims against Sgt. Sahlberg. The majority concluded there was a question of fact whether Sahlberg's actions were the "proximate cause" of Sydney's suicide, which should be decided by a jury. (A proximate cause is one that directly produces an event and without which the event would not have occurred.) Three judges dissented, writing that, "Maia may not recover for her wrongful-death and survival claims because, under well-established Georgia law, Sanders' tragic suicide was an unforeseen intervening cause of her death, which absolves Sahlberg and the City from liability for such claims." The City and Sahlberg now appeal to the state Supreme Court, which has agreed to review the case to determine whether the Court of Appeals erred "by holding that suicide was not an intervening act that would preclude liability against a negligent tortfeasor." (A "tortfeasor" is the alleged wrongdoer in a civil lawsuit – in this case, Sahlberg.)

ARGUMENTS: Attorneys for Sahlberg and the City argue that with this ruling, the Court of Appeals has ignored the Georgia Supreme Court's precedent, "thereby rewriting and confusing the law of causation in suicide cases in Georgia." Maia claims that Sydney committed suicide because of Sgt. Sahlberg's actions, yet the record shows that his actions occurred "more

than five weeks before Ms. Sanders committed suicide, and that Ms. Sanders was aware of those actions over *four weeks* before taking her own life," the attorneys argue in briefs. More than 100 years ago, in its 1913 decision in *Stevens v. Steadman*, the Georgia Supreme Court ruled that "suicide is an unforeseeable intervening cause of death which absolves the tortfeasor of liability." Only two exceptions to this general rule have been established: "Where the tortfeasor's wrongful act causes the injured party to kill himself during a rage or frenzy, or in response to an uncontrollable impulse;" or (2) where the parties have a "special relationship" and there is evidence the suicide was the result of the defendant's failure to adequately protect the injured party from self-harm. "The special relationship exception provides that if there is evidence that the tortfeasor failed to prevent a suicide from occurring despite having the means to safeguard and protect the victim from self-harm, and if there is evidence that the tortfeasor should have foreseen the need to apply those means, then the general intervening cause rule does not apply and there can be a question of fact," the attorneys argue. And if there's a question of fact, summary judgment is improper and the question of fact must go to trial for a jury to resolve. Furthermore, the special relationship exception is generally only considered in cases where the victim was under the custody or control of the alleged tortfeasor, such as a suicide committed while hospitalized. Here, Sydney was not in Sahlberg's custody, nor was she under his supervision. Yet, the Court of Appeals "found the special relationship exception was applicable, and concluded there was a question of fact whether Ms. Sanders' suicide was a reasonably foreseeable consequence of Sgt. Sahlberg's conduct," the attorneys argue. The only other exception to the general rule is whether there was evidence that "*at the time* Ms. Sanders took her life, she was in a rage or frenzy caused by Sgt. Sahlberg's conduct." Had the Court of Appeals majority undertaken the required analysis, it would have reached the same conclusion as the dissent, that "there is no evidence that Sanders was in a rage or had uncontrollable impulse…when she took her own life." As a result, that exception does not apply in this case, the attorneys argue.

Maia's attorneys argue that the Court of Appeals was right and a jury should determine whether Sahlberg's negligence was the proximate cause of Sydney's death. As the high court has ruled previously, "In Georgia, it is hornbook law that a suicide (or attempted suicide) is not actionable unless the alleged tortfeasor owes a duty to the victim, that duty is breached and the resulting injury or death is a reasonably foreseeable consequence of the tortfeasor's negligent conduct." "Because this is a negligence action, the issue of proximate causation is the critical inquiry with the linchpin of this Court's decision being the foreseeability of Sydney's suicide as a consequence of Sahlberg's negligent conduct," Maia's attorneys argue in briefs. It cannot be said that Sahlberg could not reasonably have foreseen that his conduct could cause Sydney's death, and therefore, questions of fact remain. "After all, Sahlberg had first-hand knowledge of Sydney's first attempt because he personally investigated it in his official capacity," the attorneys argue. "Common sense and logic lead every reasonable person to the conclusion that a child who has already attempted suicide is already on the ledge and capable of jumping." At a minimum, the foreseeability of Sydney's final, fatal act should be left to a jury, the lawyers contend. As to the frenzy and rampage exception to the general rule on suicide liability: "Suicides do not fit into a nice, neat package, especially when a 14-year-old child is reacting to negligent police conduct. This is precisely why Georgia jurisprudence favors a straightforward foreseeability analysis and not a draconian rule which says a suicide victim's death cannot be vindicated unless the victim is

raging, or is frenzied, whatever raging or frenzied means, and kills themselves promptly." Daily, suicides are committed by individuals "who are quite calm and quite deliberate and who take weeks, if not months, between a discrete, triggering event before committing suicide," the attorneys contend. "What foreseeability captures that the rage or frenzy exception does not is the culpability of an actor who sets into motion a sequence of events which he or she could reasonably foresee could culminate in the victim's death."
Attorneys for Appellants (City): Patrick O'Connor, Benjamin Perkins, Lauren Meadows
Attorneys for Appellee (Maia): Billy Jones, Carl Varnedoe

2:00 P.M. Session

WILLIAMS V. THE STATE (S16G1162)

A man charged with burglary is appealing a Georgia Court of Appeals ruling that an incriminating statement he made after an officer arrested him for running away while the officer was questioning him may be admitted at his trial.

FACTS: In March 2014, **Jenkins County** Sheriff Wesley Aaron was dispatched to investigate a forced entry and burglary of some chains and bucks from a metal shop. After receiving information that Michael Lloyd Williams might be involved, Aaron went to talk to Williams, whom Aaron knew, and who was in his mother's yard at the time. Williams was not in custody or under arrest, but Aaron told Williams he was a suspect in the burglary. Aaron later testified that as he asked Williams questions, Williams became "very agitated and fidgety," and as the conversation continued, Williams suddenly "took off running." Williams demanded that he stop, but he did not, and Aaron then tasered Williams and arrested him for misdemeanor obstruction of an officer for hindering the investigation. Aaron explained to Williams his rights under *Miranda* and transported Williams back to the sheriff's office. There, Aaron reread Williams his *Miranda* rights, including the right to remain silent, and Williams agreed to make a statement, which Aaron said incriminated him in the burglary. Williams was subsequently indicted for burglary and obstruction by fleeing. His attorney then filed a motion challenging the admissibility of the statements Williams had made to Aaron, arguing they were inadmissible because they were made after he was illegally arrested. Specifically, Williams argued there was no probable cause for his arrest for obstruction by flight because he fled a "first-tier encounter" with Aaron, something he was legally allowed to do. Consequently, Williams' attorney argued that any subsequent statements he made were not admissible because they were tainted by his unlawful arrest. (The U.S. Supreme Court has carved out three tiers of encounters between police and citizens: (1) communication between police and citizens involving no coercion or detention; (2) brief seizures that must be supported by reasonable suspicion; and (3) full-scale arrests that must be supported by probable cause.) Following a hearing, the trial judge suppressed the statements, finding that, "Defendant fled a first-tier encounter, something which the Defendant was permitted to do under Georgia law, thus his subsequent arrest for obstruction was illegal and without probable cause thereby making any statement made after his arrest inadmissible." The State appealed to the Court of Appeals, arguing that the trial court erred in finding that Williams' incriminating statement was the product of a first-tier encounter and in finding that the arrest was unlawful. The appellate court agreed and reversed the trial court's ruling, finding that Aaron's

arrest was supported by probable cause and was lawful, and therefore his confession was a knowing and voluntary product of a third-tier encounter and admissible at trial. Williams now appeals to the state Supreme Court.

ARGUMENTS: Williams' attorneys argue the judgment of the Court of Appeals should be reversed because the trial court's decision was not wrong. The trial court concluded that Williams' statements should be suppressed. "This was a fact-intensive determination which the trial court was authorized to make based on its review of the factual testimony," the attorneys argue in briefs. "As the trial court was allowed to make this decision, the trial court's conclusion was not legally erroneous. Moreover, this decision was entitled to deference on appeal and was not subject to second-guessing by the Court of Appeals." "The Court of Appeals erred in disregarding the trial court's factual determination and substituting its own judgment for that of the fact finder."

Represented by the District Attorney, the State argues the Court of Appeals did not err in finding that Williams' confession was a knowing and voluntary product of a lawful arrest. "Where the facts are not in dispute and no findings were made by the trial court, the appellate court owes no deference to the trial court's ruling," the State argues in briefs. "In the present case, there were no disputed facts, and the trial court made no material findings of fact." The Court of Appeals "correctly found that Deputy Aaron had probable cause to arrest Williams for the offense of obstruction of an officer by fleeing," the State argues. As the appellate court stated in its 1992 decision in *State v. Smalls,* "Flight in connection with other circumstances may be sufficient probable cause to uphold a warrantless arrest or search." Furthermore, other circumstances may give rise "to an articulable suspicion that a criminal act may have been occurring so as to authorize a brief investigatory stop." "Given Williams' unlawful flight, his demeanor, the description of the stolen property and the specific identification of Williams as a suspect, Aaron also had probable cause to arrest Williams for the burglary Aaron was investigating," the State's attorneys argue. "The Court of Appeals has committed no error in finding the arrest to have been lawful and the confession to have been knowingly and voluntarily made. The trial court erred in finding Williams' confession to have been the product of an unlawful arrest resulting from a first-tier encounter," the State argues. "The arrest was supported by both articulable suspicion and probable cause."

Attorneys for Appellant (Williams): Robert Persse, Amy Ihrig
Attorneys for Appellee (State): Richard Mallard, District Attorney, Keith McIntyre, Asst. D.A.

THE STUTTERING FOUNDATION OF AMERICA, INC. V. GLYNN COUNTY ET AL. (S17A0405)

A foundation with the mission of preventing and treating stuttering is appealing a **Glynn County** court's dismissal of its lawsuit challenging the rezoning of property that includes space leased by the Foundation.

FACTS: The Stuttering Foundation of America has leased space from Lucas Properties Holdings in an office building on St. Simon's Island, GA since October 2011. In March 2016, the Glynn County Board of Commissioners approved Lucas Properties' application to rezone the property so it could construct an addition to the back of its building. The Foundation is one of a number of the building's tenants. The Foundation opposed the rezoning, arguing that the construction of the addition would negatively affect its space by reducing natural light and

"cocooning" it between the addition and the rest of the building. To prevent construction, the Foundation filed two lawsuits, one against Lucas Properties claiming that the terms of the Foundation's lease prohibited such construction, and the other against the County claiming it was inappropriate for the County to grant the petition for rezoning. (Only the lawsuit against the County is at issue in this current appeal.) Both Lucas and the County filed separate motions to dismiss the lawsuits. On July 7, 2016, the trial court granted the County's Motion to Dismiss on the ground that the Foundation, as a tenant rather than property owner, did not have "standing," or the right, to pursue an appeal of the zoning decision. The same day, the Foundation filed an application to appeal the decision in the state Supreme Court. The County opposed the application, arguing that because the July 7 order was a pre-trial ruling and not a final judgment, the Foundation had failed to follow proper procedure as it failed to first obtain a "certificate of immediate review" from the trial court. Nevertheless, the state Supreme Court granted the Foundation's application to appeal, asking the parties to answer whether the trial court had erred in concluding that the Stuttering Foundation lacked standing to challenge the zoning decision.

ARGUMENTS: The trial court erred in determining that the Foundation lacks standing to seek a judicial review of the rezoning of the building in which it is a tenant, the Foundation's attorney argues. The trial court failed to apply the proper test adopted by the state Supreme Court, called the "substantial interest-aggrieved citizen test." In its 1984 decision in *DeKalb County v. Wapensky*, the Supreme Court described that test this way: "First, that a person claiming to be aggrieved must have a substantial interest in the zoning decision, and second, that this interest be in danger of suffering some special damage or injury not common to all property owners similarly situated." "The Foundation not only is an aggrieved citizen but it has aggrieved property interests and rights in the specific rezoned real property," the attorney argues in briefs. Georgia courts have long recognized that a tenancy is a property right or interest, which therefore supports standing to bring a rezoning challenge. "The Foundation's rights and interests as a tenant are substantial," the attorney contends. The Foundation's space will be enveloped by the proposed addition. Also, the Foundation has standing to pursue a writ of "mandamus" against the County. Such a writ is used to compel government officials to perform their duties. The trial court's order said the Foundation could not pursue mandamus relating to the rezoning because it had an adequate legal remedy in its separate lawsuit against Lucas Properties, in which it requested a declaration from the court that the lease prevents the proposed addition. "Respectfully, the trial court erred because the Foundation cannot obtain judicial review of the rezoning itself in the separate lawsuit," the Foundation's attorney argues.

The County's attorney argues that the state Supreme Court lacks the authority to hear the Foundation's appeal because it failed to follow the correct "interlocutory" – or pre-trial – court procedure. However, if the high court decides to rule on the standing issue, it should affirm the trial court's ruling, which correctly determined that the Foundation lacks standing to challenge the zoning decision. While it is true that the applicable test to determine standing is the "substantial interest-aggrieved citizen" test, and that the trial court did not assess the standing issue using this "framework," the court nevertheless "was ultimately correct in its ruling that Stuttering does not have standing to appeal the zoning decision," the attorney argues. "First, as a mere short-term tenant, Stuttering does not have a sufficient property or ownership interest in the real property that would confer standing to appeal a zoning decision. Second, Stuttering has not been aggrieved in a way that is not common to similarly situated individuals." Also, the

Foundation does not have standing to request a writ of mandamus because zoning decisions such as this "do not confer a public right," the County argues. In its 1980 decision in *Tate v. Stephens*, the Georgia Supreme Court ruled that, "Zoning ordinances and determinations do not confer a public right to the extent that they can be attacked by anyone interested in having the laws executed and the duty in question enforced," the attorney argues. "The 'substantial interest-aggrieved citizen' standing requirement clearly applies to mandamus claims. Therefore, Stuttering is unable to circumvent this requirement by alleging some sort of unsupported 'public right' theory of standing."
Attorney for Appellant (Foundation): Frank Brown, Jr.
Attorney for Appellees (County): Bradley Watkins

SHAW V. THE STATE (S17A0352)

A man is appealing his conviction in **Fulton County** for shooting and killing a man and wounding two women.

FACTS: This case stems from arguments and fights among several women who were entangled in romantic relationships with each other, as well as with others. On Dec. 10, 2011, Ashley McCord told Shelicia Reese, with whom she had been in an intimate relationship, that she was coming over to beat her up after learning that Reese had told a third woman, with whom McCord was also involved that McCord and Reese had spent the previous night together. McCord went to Reese's apartment accompanied by Shomari Grier, a man. They were met at the front door of Reese's apartment by two of Reese's coworker friends, LaShaun Brown and her boyfriend, Antonio Shaw. Later, as McCord and Grier were leaving, Brown started a fight with McCord by punching McCord in the back of her head. As the two women fought in the front yard, McCord heard Shaw say he was "fixing to blow that bitch's brains out." McCord and Reese both testified they heard Grier tell Shaw to let the two women fight. According to witnesses, Shaw then pulled out a pistol and shot Grier. Grier tried to run away, but Shaw continued shooting, with one of the bullets piercing Grier's heart and killing him. Shaw then turned his weapon on McCord, according to prosecutors, shooting her four times, and in the process shooting Brown twice. The two women survived.

In December 2012, Shaw was convicted by a Fulton County jury of murder, aggravated assault, and gun charges. He was sentenced to life plus 25 years in prison. Shaw now appeals to the state Supreme Court.

ARGUMENTS: Shaw's attorney argues the trial court violated Shaw's right to cross-examination by refusing to allow his trial attorney to question witnesses regarding their knowledge of Ashley McCord's gang membership with the Bloods. The right to a thorough cross-examination is secured by the Confrontation Clause of the Sixth Amendment of the U.S. Constitution, the attorney argues. McCord's gang membership was not only relevant but Shaw had a constitutional right to inquire into the State's witnesses' knowledge of that membership and how it affected their testimony. Shaw's primary defense was that he did not shoot the victims, and as both Ms. Brown and Ms. Reese had previously stated, the shooting was a drive-by committed by unknown assailants. Drive-by shootings are a common tactic used by street gangs. His only hope for convincing the jury that he was not the shooter was to provide evidence that Ms. McCord, Ms. Reese, Ms. Brown, and two other witnesses had some motive to falsely accuse him of the shooting. "The motive to lie that his counsel hoped to provide was that Ms.

McCord instigated the accusation in order to hide her gang affiliation from law enforcement and threatened the other witnesses to testify accordingly," the attorney argues. But despite his attorney's continued requests to be allowed to elicit this evidence from the State's witnesses, the trial court refused. Additionally, the trial court erred by failing to instruct jurors that they could also consider Shaw guilty of the less serious charge of voluntary manslaughter as opposed to murder, as there was slight evidence of provocation from Shaw's statement that he shot Grier because he thought he saw him reaching for "something." The State's interpretation of the evidence also provided evidence of provocation. Shaw became "upset" and "went on a rampage," as the prosecutor said, because his lover, LaShaun Brown, was losing a fight to a larger woman and Grier prevented him from intervening, Shaw's attorney argues.

The District Attorney's office and Attorney General's office, representing the State, argue the trial court correctly excluded "irrelevant, speculative, and unnecessarily prejudicial evidence against gangs." Furthermore, the trial court did not restrict Shaw's attorney's cross-examination of Ashley McCord. The trial court appropriately prevented Shaw from asking about McCord's alleged gang involvement as it was irrelevant. Shaw's assertion that "McCord *might have been* shot by a gang member was speculation," the State argues. The trial court only limited Shaw's questioning about McCord's alleged gang affiliation but explicitly noted his trial attorney could elicit testimony that Brown may have been scared of McCord. Even if the trial court committed error, it was harmless error as the "prosecution's case against Appellant [i.e. Shaw] was overwhelming," the State contends. The trial court also correctly denied Shaw's request for a jury instruction on voluntary manslaughter "as that charge was not supported by the evidence." Voluntary manslaughter requires evidence a defendant acted "solely as the result of a sudden, violent, and irresistible passion *resulting from serious provocation sufficient to excite such passion in a reasonable person.*" Here, "There is no evidence of serious provocation," the State argues.

Attorney for Appellant (Shaw): Michael Tarleton

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Kevin Armstrong, Sr. Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Rea, Asst. A.G.