



Supreme Court of Georgia
Kathleen Joyner, Public Information Officer
330 Capitol Ave, SE
Atlanta, Georgia 30334
404-651-9385
joynerk@gasupreme.us

SUMMARIES OF OPINIONS

Published Wednesday, January 19, 2022

Please note: *Opinion summaries are prepared by the Public Information Office for the general public and news media. Summaries are not prepared for every opinion released by the Court, but only for those cases considered of particular public interest. Opinion summaries are not to be considered as official opinions of the Court. The full opinions are available on the Supreme Court website at www.gasupreme.us.*

AWAD v. THE STATE (S21G0370)

The Supreme Court has determined that a DUI defendant's refusal to provide a urine sample may not be admitted into evidence by State prosecutors during a criminal trial because it would violate that defendant's right against compelled self-incrimination under the Georgia Constitution.

The underlying case stems from the November 2018 arrest of **Omar Awad**, whom a police officer found sleeping in the driver's seat of a vehicle that was stopped in the middle of an intersection. Following his arrest, Awad refused to provide a urine sample for chemical testing. He was later charged with driving under the influence and other traffic offenses. Before trial,

Awad moved to suppress his refusal to submit to the urine test, and the **Whitfield County** trial court granted his motion. **The State**, represented by the Conasauga Judicial Circuit District Attorney’s Office, appealed, and the Court of Appeals reversed the trial court’s ruling.

In the opinion issued today, the Supreme Court has reversed the Court of Appeals and has sent the case back to the trial court for further proceedings.

The unanimous opinion, written by **Justice Verda M. Colvin**, notes that while the language prohibiting compelled self-incrimination found in Paragraph XVI of Article I, Section I of the Georgia Constitution references only “testimony,” the Court has concluded in previous cases that the provision also prohibits the State from compelling a defendant to perform an act that would generate incriminating evidence. In its 2017 opinion in *Olevik v. State*, the Court held that individuals have the right to refuse state-administered breath tests—the kinds that require unnatural and sustained deep lung exhalation. And in its 2019 opinion in *Elliott v. State*, the Court held that the State Constitution prohibits admission of evidence that a suspect refused to consent to a breath test.

Because the particular method of collecting urine from the suspect would have required him to produce evidence from his body in a manner directed by the State that was neither natural nor automatic, the Court held in this case that the State is prohibited under the constitutional provision from admitting into evidence Awad’s refusal to submit to a urine test.

“[B]ecause Awad had a right to refuse the State’s request that he provide a urine sample in a collection container, the trial court properly granted his motion to suppress evidence of his refusal to submit to the test,” Justice Colvin wrote.

Writing only for herself, Justice Colvin added a short concurring opinion expressing her “grave concerns” about the Court’s interpretation of the Georgia Constitution in the previous cases, *Olevik* and *Elliott*, while acknowledging that the issue “is not squarely before the Court today.”

Attorney for Appellant (Awad): D. Benjamin Sessions

Attorneys for Appellees (State): Bert Poston, Conasauga Judicial Circuit District Attorney, Mark P. Higgins, Jr. Asst. D.A.

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

- * Odeirrick Boone (Fulton Co.)
- * Emanuel Ellison (Walton Co.)
- * Lowe Deontae Payne (Paulding Co.)
- * Devon Jenkins (Gwinnett Co.)

- BOONE v. THE STATE** (S21A1065)
- ELLISON v. THE STATE** (S22A0041)
- PAYNE v. THE STATE** (S21A1096)
- JENKINS v. THE STATE** (S21A1127)

IN LAWYER DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** from attorney:

* Waymon Sims **IN THE MATTER OF: WAYMON SIMS (S22Y0395, S22Y0396)**

The Court has accepted a petition for **voluntary three-month suspension with conditions** from attorney:

* Sawand Palmer **IN THE MATTER OF: SAWAND PALMER (S22Y0394)**

The Court has accepted a petition for **voluntary public reprimand** from attorney:

* Justin Grey Woodward **IN THE MATTER OF: JUSTIN GREY WOODWARD (S22Y0331)**