

Mercer Law Review

Volume 71
Number 1 *Annual Survey of Georgia Law*

Article 7

1-2020

Criminal Law

John A. Regan

Follow this and additional works at: https://digitalcommons.law.mercer.edu/jour_mlr



Part of the [Criminal Law Commons](#)

Recommended Citation

Regan, John A. (2020) "Criminal Law," *Mercer Law Review*. Vol. 71 : No. 1 , Article 7.
Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol71/iss1/7

This Survey Article is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact repository@law.mercer.edu.

Criminal Law

by John A. Regan*

I. INTRODUCTION

This Article reviews some of the most important opinions impacting the practice of criminal law delivered by the Supreme Court of the United States and the Georgia Supreme Court covering the period of June 1, 2018 up until May 31, 2019, as well as legislation adopted by the Georgia General Assembly during the 2019 Session.¹ This Article is designed to be a mere overview to both prosecutors and defense attorneys of decisions and new statutes and serves as a broad guideline to how these decisions will affect their practices.

II. UNITED STATES SUPREME COURT DECISIONS

Although the Supreme Court has delivered multiple decisions during the term, two decisions are covered in this Article. The first, *Carpenter v. United States*,² dealt with whether a person's cell-site information was subject to a search warrant. In *Bucklew v. Precythe*,³ the Court again considered the death penalty and the Eighth Amendment.

In *Carpenter*, the issue was whether the government was required to get a search warrant requiring probable cause rather than a court order under the Stored Communications Act⁴ to obtain the cell phone records they were after.⁵ Writing for the majority, Chief Justice Roberts overturned the lower court's ruling that "[a] person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, 'what [one] seeks to preserve as private, even in an

*State Gang Resource Prosecutor, Prosecuting Attorneys Council of Georgia. Former Assistant District Attorney, Macon Judicial Circuit. Wake Forest University (B.A., cum laude, 1998); Mercer University School of Law (J.D., 2001). Member, State Bar of Georgia.

1. See Bernadette C. Crucilla, *Criminal Law, Annual Survey of Georgia Law*, 70 MERCER L. REV. 63 (2018) for an analysis of criminal law during the prior survey period.

2. 138 S. Ct. 2206 (2018) (5–4 decision) (Roberts, C.J.).

3. 139 S. Ct. 1112 (2019) (5–4 decision) (Gorsuch, J.).

4. 18 U.S.C. § 2703 (2019).

5. *Carpenter*, 138 S.Ct. at 2212.

area accessible to the public, may be constitutionally protected.”⁶ He further went on to say that

[a]llowing government access to cell-site records contravenes that expectation. Although such records are generated for commercial purposes, that distinction does not negate Carpenter’s anticipation of privacy in his physical location . . . [T]racking is remarkably easy, cheap, and efficient compared to traditional investigative tools. With just the click of a button, the Government can access each carrier’s deep repository of historical location information at practically no expense.⁷

As such, the government’s actions were determined to be a violation of the Fourth Amendment and set the precedent that getting cell-site records required a search warrant requiring probable cause, not merely executing a court order showing no probable cause, and the conviction of Carpenter was overturned on a 5–4 decision, with Roberts siding with the “liberal” wing of the Court: Justices Ginsburg, Breyer, Sotomayor, and Kagan.⁸

In *Bucklew*, the defendant was convicted of a brutal murder, kidnapping, and rape of his ex-girlfriend and was sentenced to death in Missouri.⁹ Two weeks before his scheduled execution, he raised an argument that due to his unique medical condition, the way Missouri executed prisoners, the same way Georgia does, using the drug Pentobarbital, would produce excruciating pain and, as such, violate the Eighth Amendment. The defendant offered an alternative for his execution, the use of “lethal gas” using nitrogen, but this method has never been used by any state to carry out an execution.¹⁰ In delivering the opinion of the Court, Justice Gorsuch disagreed with *Bucklew*. He stated that the Eighth Amendment does not guarantee a prisoner a painless death and noted that this was a right most victims of capital crimes were denied.¹¹ Rather, “what unites the punishments the Eighth Amendment was understood to forbid, and distinguishes them from those it was understood to allow, is that the former were long disused (unusual) forms of punishment that intensified the sentence of death

6. *Id.* at 2217 (quoting *Katz v. United States*, 389 U.S. 347, 351–52 (1967)).

7. *Id.* at 2217–18.

8. *Id.* at 2223.

9. *Bucklew*, 139 S.Ct. at 1116, 1119.

10. *Id.* at 1120–21.

11. *Id.* at 1124.

with a (cruel) ‘superadd[ition]’ of ‘terror, pain, or disgrace.’”¹² Justice Gorsuch also went on to state that

the surviving victims of Mr. Bucklew’s crimes, and others like them deserve better. Even the principal dissent acknowledges that ‘the long delays that now typically occur between the time an offender is sentenced to death and his execution’ are ‘excessive.’ The answer is not, as the dissent incongruously suggests, to reward those who interpose delay with a decree ending capital punishment by judicial fiat.¹³

This decision impacts Georgia because, as previously stated, the method of execution used in Missouri is the same used by our Department of Corrections. As such, the decision in *Bucklew* will have an impact on death sentences imposed in Georgia.

III. GEORGIA SUPREME COURT DECISIONS

To convict a person of statutory rape in Georgia, there must be some evidence that corroborates the victim’s testimony that the defendant committed the crime alleged.¹⁴ In *Atkins v. State*,¹⁵ the Georgia Supreme Court ruled that a complainant’s prior consistent statement could not provide the corroborating evidence required to support the conviction, overturning several opinions that had been delivered by the Georgia Court of Appeals.¹⁶ In delivering the opinion of the court, Justice Melton stated,

The value of a prior consistent statement is that it does not differ from a subsequent statement. The consistency of a prior statement of the statutory rape victim makes a subsequent statement that contains the same details more believable. On the other hand, corroborating evidence earns its value because it is independent from the victim’s statement. It is evidence from an independent source that supports the conclusion that the defendant committed the statutory rape of the victim. For this fundamental reason, a prior statement by a victim is not, by definition or otherwise, corroborating evidence that the statutory rape occurred.¹⁷

12. *Id.* (quoting *Baze v. Rees*, 553 U.S. 35, 48 (2008)).

13. *Id.* at 1134 (quoting Breyer, J., dissenting).

14. O.C.G.A. § 16-6-3(a) (2019).

15. 304 Ga. 240, 818 S.E.2d 567 (2018).

16. *Atkins*, 304 Ga. at 240, 243–44, 818 S.E.2d at 569–71.

17. *Id.* at 244, 818 S.E.2d at 571 (emphasis omitted).

Justice Melton's ruling also cited to Georgia's new evidence code, adopted in 2013, in that a witness cannot corroborate his or her own statement.¹⁸

In deciding *Willis v. State*,¹⁹ the Georgia Supreme Court took up the argument about whether or not a defendant was presumptively harmed by a trial judge's erroneous failure to excuse a prospective juror for cause simply because the defendant subsequently elected to remove that juror through the use of a peremptory strike. The decision, authored by Justice Benham, was that the defendant was not overruling several cases,²⁰ including *Fortson v. State*²¹ and *Harris v. State*.²² In delivering the opinion of the court, Justice Benham based his decision on the United States Supreme Court's ruling in *United States v. Martinez-Salazar*²³ and the dissent in *Fortson v. State*. Citing the dissent in *Fortson*, Justice Benham stated,

"[T]he mere exhaustion or waste of peremptory strikes should not dictate that a given action regarding a disqualified juror is either invariably harmless or necessarily harmful. Instead, the focus under current Georgia law should be on whether any unqualified juror was seated as the ultimate result of errors with respect to jurors challenged for cause."²⁴

In finally overruling *Fortson*, the Georgia Supreme Court ruled that

a defendant is not presumptively harmed by a trial court's erroneous failure to excuse a prospective juror for cause simply because the defendant subsequently elected to remove that juror through the use of a peremptory strike. Instead, such a defendant must show on appeal that one of the challenged jurors who served on his or her twelve-person jury was unqualified.²⁵

The Georgia Supreme Court also addressed the issue of newly discovered evidence in a defendant's motion for new trial in *Jackson v.*

18. *Id.* at 244 n.1, 820 S.E.2d at 571 n.1 (citing O.C.G.A. § 24-14-8 (2019)).

19. 304 Ga. 686, 820 S.E.2d 640 (2018).

20. *Id.* at 700–02, 820 S.E.2d at 654–55.

21. 277 Ga. 164, 587 S.E.2d 39 (2003).

22. 255 Ga. 464, 339 S.E.2d 712 (1986).

23. 528 U.S. 304, 317 (2000) (per curiam) (Ginsburg, J.) (ruling that a defendant who exercises a peremptory strike on a juror to remove a judge's error suffers no harm and is not derived of a constitutional right).

24. *Willis*, 304 Ga. at 705, 820 S.E.2d at 657 (emphasis omitted) (quoting *Fortson*, 277 Ga. at 170, 587 S.E.2d at 44 (Carley, J., dissenting)).

25. *Id.* at 707, 820 S.E.2d at 659.

State.²⁶ In denying the defendant's claim for a new trial based on new evidence, Justice Peterson ruled, citing to the factors established under *Timberlake v. State*,²⁷ that the trial court did not abuse its discretion in denying a motion for new trial.²⁸ In *Jackson*, the appellant brought forward a new witness named McGlotha who alleged to have been present at a murder and presented testimony that appellant was not present at the murder.²⁹ The supreme court, in upholding the lower court, determined that

[i]mplicit in the trial court's evaluation of the diligence used to procure McGlotha's testimony was a finding that one of two things was true: either (1) McGlotha actually was present near the scene of the crime on the night in question, in which case Appellant could have secured his presence for trial had he exercised proper diligence; or (2) McGlotha was not present at the scene as he claimed and thus his testimony was not credible. The finding that the defense would have discovered McGlotha was a witness in time for trial had he actually been present at the scene is not an unreasonable one.³⁰

Perhaps one of the most impactful decisions the supreme court delivered during this past year was the decision in *Elliott v. State*,³¹ dealing with a defendant's refusal to submit to a breath test in a driving under the influence case. The question before the court was whether that violated the right against self-incrimination. The court had previously held in *Olevik v. State*³² that someone suspected of driving under the influence could not be forced into submitting to a chemical breath test under Georgia's Constitution.³³ The question in *Elliott*

26. 304 Ga. 827, 822 S.E.2d 198 (2018).

27. 246 Ga. 488, 491, 271 S.E.2d 792, 795–96 (1980) (establishing a six-factor test to grant a new trial based on newly discovered evidence. The party asking for a new trial must show that: (1) the evidence has come to his/her knowledge since the trial; (2) it was not owing to the want of due diligence that he/she did not acquire it sooner; (3) the evidence is so material that it probably would produce a different verdict; (4) the evidence is not merely cumulative; (5) the affidavit of the witness himself/herself has been procured or its absence accounted for; and (6) impeaching the credibility of a witness will not be the only effect of the evidence. All six requirements must be met in order to secure a new trial.).

28. *Jackson*, 304 Ga. at 831, 822 S.E.2d at 201–02.

29. *Id.* at 830, 822 S.E.2d at 201.

30. *Id.* at 831, 822 S.E.2d at 202.

31. 305 Ga. 179, 824 S.E.2d 265 (2019).

32. 302 Ga. 228, 806 S.E.2d 505, 508–09 (2017) (holding that the Georgia Constitution's, not the United States Constitution's, right against self-incrimination prevented the State from forcing a person to submit to a chemical breath test).

33. *Id.* at 228–29, 806 S.E.2d at 509.

became whether or not the court would expand on *Olevik* and include a person's right to not have the refusal of said test held against them. The facts that gave rise to *Elliott* involved a woman stopped in Clarke County after the officer observed several traffic violations. Elliott admitted to having consumed alcohol earlier in the day and performed a standardized field sobriety test that showed several signs of impairment.³⁴ She was arrested and read the statutorily mandated implied consent notice.³⁵ She refused the testing, was taken to jail, and at trial filed a motion to suppress the refusal under Georgia's Constitution and Georgia Code.³⁶ Justice Peterson's decision expanded the holding in *Olevik* and held that the Georgia Constitution, not the United States Constitution, protects citizens from having a refusal to submit to chemical testing held against them in a court of law.³⁷ The court reasoned,

This Court cannot change the Georgia Constitution, even if we believe there may be good policy reasons for doing so; only the General Assembly and the people of Georgia may do that. And this Court cannot rewrite statutes. This decision may well have implications for the continuing validity of the implied consent notice as applied to breath tests, but revising that notice is a power reserved to the General Assembly. Having considered the text of Paragraph XVI and the context in which it was enacted, as well as all of the arguments made by the parties and the amici, we conclude that Paragraph XVI precludes admission of evidence that a suspect refused to consent to a breath test. Consequently, we conclude that O.C.G.A. §§ 40-5-67.1 (b) and 40-6-392 (d) are unconstitutional to the

34. *Elliott*, 305 Ga. at 180–81, 824 S.E.2d at 268.

35. *Id.* at 181, 824 S.E.2d at 268; O.C.G.A. § 40-5-67.1(b)(2) (2018). The language of the implied consent notice for drivers aged 21 years or older (as was Elliott) read as follows:

Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?

36. *Elliott*, 305 Ga. at 181, 824 S.E.2d at 268.

37. *Id.* at 223, 824 S.E.2d at 296.

extent that they allow a defendant's refusal to submit to a breath test to be admitted into evidence at a criminal trial.³⁸

The ramifications and response by the Georgia General Assembly to the *Elliott* decision will be addressed further in the General Assembly section of this Article.

Following on the heels of the *Elliott* decision, the Georgia Supreme Court delivered the decision in *State v. Turnquest*,³⁹ ruling that law enforcement was not required to read the *Miranda*⁴⁰ warnings to a person in custody prior to asking them to submit to a breath test.⁴¹ The case arose after defendant Turnquest was arrested for driving under the influence following a single-vehicle accident and was read the appropriate Georgia implied consent notice, as was the case in *Elliott*, but not the *Miranda* warnings whereabout he gave a breath sample.⁴² The court held *Miranda* does not apply to a request for a breath test, however, because affirmative acts such as submitting to a breath test do not fall within the reach of the right against compelled self-incrimination protected by the Fifth Amendment.⁴³ The court then looked to see if Turnquest's argument turned on some element of Georgia law requiring law enforcement to give a suspect in custody *Miranda*-like warnings before asking the suspect to consent to a breath test.⁴⁴ The court considered several possible Georgia-law sources for such a requirement. As Justice Peterson wrote,

Turnquest explicitly relies on Paragraph XVI in support of his argument that warnings were required. We also consider the due process provision of the Georgia Constitution, found at Article I, Section, I, Paragraph I of the Georgia Constitution of 1983 ("Paragraph I"), given that due process also is implicated in questions of whether incriminating statements or acts were constitutionally acquired by law enforcement and may be at least one basis for the *Miranda* rule. And the trial court relied at least in part on former O.C.G.A. § 24-9-20 (a), now O.C.G.A. § 24-5-506 (a), so we consider that statute as a possible source, as well. We ultimately conclude that none of these provisions of Georgia law require law enforcement

38. *Id.*

39. 305 Ga. 758, 827 S.E.2d at 865 (2019).

40. 384 U.S. 436 (1966).

41. *Turnquest*, 305 Ga. at 758, 827 S.E.2d 868.

42. *Id.* at 759, 827 S.E.2d at 868.

43. *Id.* at 760, 827 S.E.2d at 869 (citing *United States v. Wade*, 388 U.S. 218, 221–23 (1967); *Holt v. United States*, 218 U.S. 245, 252–53 (1910); and *Schmerber v. California*, 384 U.S. 757, 760–65 (1966)).

44. *Id.*

to warn persons in custody of any constitutional rights before asking them to submit to a breath test.⁴⁵

In doing so, the court overruled *Price v. State*,⁴⁶ a case which held that failure to give *Miranda* warnings rendered evidence regarding field sobriety tests inadmissible because a person was in custody when asked to perform them.⁴⁷

Another landmark decision over the past year, *State v. Rosenbaum*,⁴⁸ dealt with searches of electronic devices initially seized in a warrantless but lawful manner by law enforcement. At issue were a laptop, iPhones, and an iPad taken during the arrest of Jennifer and Joseph Rosenbaum for the death of their two-year-old foster child, Laila Daniel, and alleged physical abuse of their second foster child, M.P., the biological sister of Laila. The electronics in question were seized at the time of the defendants' arrest without a warrant and law enforcement eventually obtained search warrants for the items, but not until 539 days had elapsed with other search warrants not issued until 702 days after the initial seizure. The reason for the delay in the search was the result of the police department failing to disclose to the District Attorney's Office the existence of seized electronics, and upon learning of said seizure, the prosecutor did seek and obtain search warrants, but not until 536 days had passed since the initial seizure.⁴⁹ On February 27, 2018, the trial court initially suppressed the search as a violation of the defendants' Fourth Amendment right to unreasonable search and seizure under the analysis employed by the United States Court of Appeals for the Eleventh Circuit.⁵⁰ Upon beginning its review, the supreme court applied three fundamental principles in its analysis:

45. *Id.* at 760–61, 827 S.E.2d at 869 (citation omitted).

46. 269 Ga. 222, 498 S.E.2d 262 (1998).

47. *Turnquest*, 305 Ga. 774–75, 827 S.E.2d at 878–79. The court stated Accordingly, we overrule *Price* and other Georgia appellate decisions to the extent that they hold that either O.C.G.A. § 24-5-506 (a) or the Georgia Constitution requires law enforcement to warn suspects in custody of their right to refuse to perform an incriminating act. We also disapprove language in other decisions that is inconsistent with our holding in this case. Because the trial court's ruling suppressing the results of Turnquest's breath test relied on *Price*, we vacate that ruling.

Id.

48. 305 Ga. 442, 826 S.E.2d 18 (2019).

49. *Id.* at 442–44, 826 S.E.2d at 20–22.

50. *Id.* at 446, 826 S.E.2d at 23 (citing *United States v. Mitchell*, 565 F.3d 1347, 1350–51 (11th Cir. 2009) and *United States v. Laist*, 702 F.3d 608, 613–14 (11th Cir. 2012)).

First, when a motion to suppress is heard by the trial judge, that judge sits as the trier of facts. The trial judge hears the evidence, and his findings based upon conflicting evidence are analogous to the verdict of a jury and should not be disturbed by a reviewing court if there is any evidence to support [them]. Second, the trial court's decision with regard to questions of fact and credibility must be accepted unless clearly erroneous. Third, the reviewing court must construe the evidence most favorably to the upholding of the trial court's findings and judgment. On numerous occasions the appellate courts of this state have invoked these three principles to affirm trial court rulings that upheld the validity of seizures. These same principles of law apply equally to trial court rulings that are in favor of the defendant.⁵¹

The court went on to point out that this was a case of first impression, but the issue had been addressed extensively by the Eleventh Circuit.⁵²

Justice Boggs, in upholding the decision of the trial court and agreeing to the suppression of the search on Fourth Amendment grounds, wrote:

The trial court found that the duration of the delay in this case “weighed strongly in favor of the Defendants.” Here, the delay between seizure of the devices and searches of their contents pursuant to the warrants was significantly longer than the delay in cases decided by the Eleventh Circuit and cases from other circuits upon which the Eleventh Circuit and the trial court relied. The State in its appellate brief cites several additional cases, but none involved so lengthy a delay, and the circumstances underlying the delays differ substantially from those presented in the case before us. Moreover, in each of those cases, the trial court made the fact-specific determination that the delay was reasonable. In contrast, in cases involving no earlier warrant, consent, or agreement under a probation order, and no other extenuating factors such as complexity of investigation, lack of manpower, or other showing of police diligence justifying delay, the delay complained of is measured in days or weeks—rather than months.

The State claims that the trial court erred in “tucking away” the analysis of the State's conduct into the *Laist* delay factor. That contention is without merit. The trial court considered the State's conduct both in its analysis of delay and at the conclusion of its

51. *Id.* at 449, 826 S.E.2d at 25 (citing *Miller v. State*, 288 Ga. 286, 286–87, 702 S.E.2d 888, 889–90 (2010)).

52. *Id.*

analysis. In addition, the Eleventh Circuit in *Laist* was not as methodical in its approach as the trial court was in the order before us, and it followed no strict sequence in its consideration of the four factors, once it outlined them. But it is apparent that the *Laist* court considered the diligence of the police in the context of possible factors contributing to the delay in obtaining a warrant—including the scope of the investigation and complexity of the warrant, the personnel available, and conflicting demands on the investigators' time, see [*Laist*.] 702 F.3d at 614—and concluded that the delay was not caused by lack of diligence on part of the police.

Here, in contrast, the State made no showing of particular complexity, difficulty in drafting the warrant, or competing demands on a limited number of officers. Instead, the trial court found multiple errors, failures, and oversights on the part of the State with respect to investigating or even accounting for the devices. Despite the specific listing of each device in the property booking sheets attached to separate reports by Officer Butera and Detective Harrison, which Detective Thompson acknowledged he had in his file but did not read, and despite requests by appellees and at least one direct request to the property and evidence room, police “inexplicably” did not find the devices in their own property and evidence room until after the May 23, 2017 hearing, although the devices had been there since the time of appellees' arrest in 2015. The trial court's conclusion that “the State did not diligently pursue its investigation as it relates to the content of these devices” is amply supported by the record.⁵³

As such, the delay in the searches was ruled to be a violation of the defendants' Fourth Amendment right and the searches of their electronic devices seized without a warrant were held inadmissible.⁵⁴ Justice Boggs went on further, noting,

The circumstances here more closely resemble those in *Burgard*, [] in which the Seventh Circuit determined that the *Leon* good-faith exception would not apply to an unreasonable delay in obtaining a search warrant, observing that “[a] well-trained officer is presumed to be aware that a seizure must last no longer than reasonably necessary for the police, acting with diligence, to obtain a warrant. When police fail to act with such diligence, exclusion will typically be the appropriate remedy.” The Seventh Circuit also noted:

53. *Id.* at 452–554, 826 S.E.2d at 27–28 (footnote omitted) (citing *Laist*, 702 F.3d 608 (11th Cir. 2012)).

54. *Id.* at 454–55, 826 S.E.2d at 28.

Furthermore, removing this sort of police misconduct from the ambit of the exclusionary rule would have significant implications: it would eliminate the rule's deterrent effect on unreasonably long seizures. Police could seize any item—a phone, a computer, a briefcase, or even a house—for an unreasonably long time without concern for the consequences, evidentiary and otherwise.⁵⁵

The supreme court also considered the constitutionality of requiring a sex offender to wear a GPS monitoring device for life, despite not being on probation or parole.⁵⁶ In *Park v. State*,⁵⁷ the court first considered whether the statute amounted to a search under the Fourth Amendment, which the court held it did.⁵⁸ Once determining that the statute was in fact a search, the court then consider whether said search was in fact reasonable.⁵⁹ Justice Melton in his opinion ruled it was not and held the statute unconstitutional.⁶⁰ He wrote,

55. *Id.* at 456, 826 S.E.2d at 29 (quoting *United States v. Burgard*, 675 F.3d 1029, 1035 (7th Cir. 2012)).

56. O.C.G.A. § 42-1-14(e) (2019) states:

Any sexually dangerous predator shall be required to wear an electronic monitoring system that shall have, at a minimum: (1) The capacity to locate and record the location of a sexually dangerous predator by a link to a global positioning satellite system; (2) The capacity to timely report or record a sexually dangerous predator's presence near or within a crime scene or in a prohibited area or the sexually dangerous predator's departure from specific geographic locations; and (3) An alarm that is automatically activated and broadcasts the sexually dangerous predator's location if the global positioning satellite monitor is removed or tampered with by anyone other than a law enforcement official designated to maintain and remove or replace the equipment.

Such electronic monitoring system shall be worn by a sexually dangerous predator for the remainder of his or her natural life. The sexually dangerous predator shall pay the cost of such system to the Department of Community Supervision if the sexually dangerous predator is under probation or parole supervision and to the sheriff after the sexually dangerous predator completes his or her term of probation and parole or if the sexually dangerous predator has moved to this state from another state, territory, or country. The electronic monitoring system shall be placed upon the sexually dangerous predator prior to his or her release from confinement. If the sexual offender is not in custody, within 72 hours of the decision classifying the sexual offender as a sexually dangerous predator in accordance with subsection (b) of this Code section, the sexually dangerous predator shall report to the sheriff of the county of his or her residence for purposes of having the electronic monitoring system placed on the sexually dangerous predator.

57. 305 Ga. 348, 825 S.E.2d 147 (2019).

58. *Id.* at 348, 825 S.E.2d at 150.

59. *Id.* at 351–52, 825 S.E.2d at 152.

60. *Id.* at 360–61, 825 S.E.2d at 158.

We find such searches to be patently unreasonable, and therefore conclude that [O.C.G.A.] § 42-1-14 (e) is unconstitutional on its face to the extent that it authorizes such searches of individuals, like Park, who are no longer serving any part of their sentences in order to find evidence of possible criminal conduct.⁶¹

IV. GEORGIA GENERAL ASSEMBLY DECISIONS

In response to the decisions in *Elliott* and *Turnquest*, the 2019 session of the Georgia General Assembly saw a quick reaction to the supreme court's decision. The response was in the form of House Bill 471,⁶² which altered Georgia's implied consent statute under O.C.G.A. § 40-5-67.1.⁶³ Governor Brian Kemp signed the legislation into law on April 29, 2019, which replaced the previous warnings for drivers under twenty-one, over twenty-one, and those operating commercial motor vehicles with the following language:

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent notice from the following:

(1) Implied consent notice for suspects under age 21:

“The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?”

(2) Implied consent notice for suspects age 21 or over:

61. *Id.*

62. Ga. H.R. Bill 471, Reg. Sess. (2019) (codified at O.C.G.A. §§ 27-3-7, 40-5-67.1, and 52-7-12.5 (2019)).

63. O.C.G.A. § 40-5-67.1 (2019).

“The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver’s license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver’s license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?”

(3) Implied consent notice for commercial motor vehicle driver suspects: “The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate the presence of any alcohol, you will be issued an out of service order and will be prohibited from operating a commercial motor vehicle for 24 hours. If the results indicate an alcohol concentration of 0.04 grams or more, you will be disqualified from operating a commercial motor vehicle for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?”⁶⁴

V. CONCLUSION

These decisions are just a handful of the cases that will impact criminal law in Georgia. The law is always in a state of flux, which requires prosecutors and criminal defense attorneys alike to always be aware of the cases granted certiorari by the courts and be aware of the

64. O.C.G.A. § 40-5-67.1(b)(1)–(3) (2019). See Ga. H.R. Bill 471, Reg. Sess. (2019).

impact their decisions will have on the cases argued across this state and country for years to come. So too will the laws passed by the General Assembly affect the way criminal cases are handled by Georgia's courts.