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# Criminal Law

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## 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 from June 1, 2020, up until May 31, 2021, as well as legislation adopted by the Georgia General Assembly during the 2020 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 on how these decisions will affect the practices.

## II. UNITED STATES SUPREME COURT DECISIONS

Although the United States Supreme Court has delivered multiple decisions during the term, two of these decisions are covered in this Article. The first, *Torres v. Madrid*,[2] dealt with the definition of a "seizure" under the Fourth Amendment, and whether an unsuccessful attempt to restrain a person is a seizure.[3] In *Jones v. Mississippi*,[4] the Court assessed whether a sentencing court was required to make a factual finding of "permanent incorrigibility" before sentencing a murder defendant under the age of eighteen to life without the possibility of parole.[5]

In *Torres*, the issue was whether law enforcement had seized a suspect, as defined by the Fourth Amendment of the United States

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1. For the summary of criminal law in the prior Survey period, *see* John Allen Regan, *Criminal Law*, *Annual Survey of Georgia Law*, 72 MERCER L. REV. 81 (2020).

2. 141 S.Ct. 989 (2021).

3. *Id*.

4. 141 S.Ct. 1307 (2021).

5. *Id*.

Constitution, when they chased and shot the defendant as he successfully fled from them.[6] Writing for the majority, Chief Justice Roberts wrote, "[t]he application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person."[7] This case began when New Mexico State Police officers showed up at an apartment complex to arrest a woman "accused of white collar crimes, but also 'suspected of having been involved in drug trafficking, murder, and other violent crimes.'"[8]

The officers approached the woman, who was experiencing the symptoms of withdrawal from methamphetamine.[9] Believing that they were carjackers, she hit the gas to run from them. Two officers fired thirteen rounds into the vehicle, striking her in the back and paralyzing her left arm. She asked a bystander to report the carjacking before stealing another vehicle and driving away. She drove seventy-five miles to a hospital that airlifted her back to Albuquerque. She was arrested the next day and ultimately plead "no contest" to aggravated fleeing from a law enforcement officer, assault on a peace officer, and unlawfully taking a motor vehicle.[10]

She later filed suit against the officers under 42 U.S.C. § 1983[11], claiming that "the officers applied excessive force, making the shooting an unreasonable seizure under the Fourth Amendment."[12] The United States District Court for the District of New Mexico granted summary judgment to the officers, and the Court of Appeals for the Tenth Circuit affirmed on the ground that "a suspect's continued flight after being shot by police negates a Fourth Amendment excessive-force claim."[13] The court of appeals reasoned, relying on *Brooks v. Gaenzle*[14], that to be a seizure "such physical touch (or force) must terminate the suspect's movement."[15]

The Supreme Court reversed the court of appeals and held that "an officer's application of physical force to the body of a person 'for the purpose of arresting him' was itself an arrest—not an *attempted* arrest—

6. *Torres,* 141 S.Ct. at 993–94.
7. *Id.* at 994.
8. *Id.*
9. *Id.*
10. *Id.*
11. 42 U.S.C. § 1983 (2021).
12. *Torres*, 141 S.Ct. at 994.
13. *Id.* (quoting Torres v. Madrid, 769 F. App'x. 654, 657 (10th Cir. 2019)).
14. 614 F.3d 1213, 1223 (10th Cir. 2010)
15. *Torres,* 141 S.Ct. at 994.

even if the person did not yield.'"[16] The Court's holding is limited, as Chief Justice Roberts explained:

> We hold that the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. Of course, a seizure is just the first step in the analysis. The Fourth Amendment does not forbid all or even most seizures—only unreasonable ones.[17]

The Court remanded the case to determine the reasonableness of the seizure, the damages, and whether qualified immunity should be applied.[18]

Justice Gorsuch, in a dissent joined by Justices Thomas and Alito, wrote that "[t]he majority holds that a criminal suspect can be simultaneously seized and roaming at large."[19] The dissent took issue with the definition of seizure, reasoning that the majority has conflated an arrest with a battery.[20] And it characterized the majority's definition of seizure as "schizophrenic."[21]

The effect of this definition of seizure is difficult to predict, but it could have an impact on motions to suppress in the criminal context. What will be the ultimate fate of such Fourth Amendment cases as *Illinois v. Wardlow*?[22] In that case, officers had reasonable suspicion to detain a suspect based upon his sudden and unprovoked flight from identifiable police officers on patrol in a high crime area.[23] However, in the wake of *Torres*, the same suspect may be seized or arrested if police had touched him or attempted to touch him before flight, perhaps arising to the level of a tier-three encounter for *Miranda v. Arizona*,[24] or consent to search purposes. Time will tell whether this case represents a narrow expansion of Fourth Amendment law in the civil arena or a sweeping shift in the area of search and seizure in the criminal realm.

The other significant Supreme Court case was *Jones v. Mississippi*, involving a life sentence to a juvenile offender.[25] Specifically, the question

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16. *Id.* at 995 (quoting California v. Hodari D.*,* 499 U.S. 621, 624 (1991)(emphasis in original)).

17. *Torres,* 141 S.Ct. at 1003.

18. *Id.*

19. *Id.* (Gorsuch, J., dissenting).

20. *Id.* (Gorsuch, J., dissenting).

21. *Id.* at 1006. (Gorsuch, J., dissenting).

22. 528 U.S. 119 (2000).

23. *Id.* at 121.

24. 383 U.S. 436 (1966).

25. 141 S.Ct. at 1307.

for the Court was whether it was proper and lawful to sentence an offender to life without parole for a murder committed when he was under the age of eighteen, without first finding that the offender was "permanently incorrigible."[26] At issue was the reach of *Miller v. Alabama*,[27] a case holding that a mandatory sentence of life without parole for an offense committed by an offender under the age of eighteen was unconstitutional.[28]

In *Jones*, a fifteen-year-old child was living with his grandparents.[29] The child and his grandparents had a disagreement when the child was caught with his girlfriend in his room which escalated into a physical altercation. The child ultimately stabbed his grandfather with a knife until it broke. Then he picked up a second knife and continued stabbing. The grandfather was ultimately stabbed eight times, resulting in his death. Rather than call 911, the child attempted to cover up the crime, dragged his body inside, and cleaned up the blood. Ultimately, the child confessed.[30]

The child was tried as an adult, and the jury rejected a claim of self-defense and manslaughter.[31] Under Mississippi law, murder—at the time *Jones* was decided—carried a mandatory sentence of life without parole, and the child was sentenced accordingly.[32] While the child's post-conviction relief litigation was in the pipeline, the Supreme Court decided *Miller*,[33] which was later applied retroactively.[34] Ultimately, Jones appeared for re-sentencing.[35] At that hearing, "the sentencing judge acknowledged that he had discretion under *Miller* to impose a sentence less than life without parole. But after considering the factors 'relevant to the child's culpability,' the judge determined that life without parole remained the appropriate sentence for Jones."[36]

Jones, through counsel, argued that a child could not receive a sentence of life without parole on a homicide charge unless the sentencing court made a separate factual finding that the defendant is

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26. *Id.* at 1311.
27. 567 U.S. 460, 465 (2012).
28. *Jones*, 141 S.Ct. at 1311.
29. *Id.* at 1312.
30. *Id.* at 1312.
31. *Id.*
32. *Id.*
33. 132 S.Ct. at 2455.
34. *Jones*, 141 S.Ct. at 1312; *see also* Montgomery v. Louisiana, 136 S.Ct. 718 (2016) (holding that *Miller* applies retroactively).
35. *Jones*, 141 S.Ct. at 1312–13.
36. *Id.* at 1313.

permanently incorrigible.[37] The majority rejected the argument, in an opinion written by Justice Kavanaugh, and held that "[i]n a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient."[38] The Court reasoned that it is only necessary that a "sentencer consider youth as a mitigating factor."[39] Even here, it concluded that a sentencing judge need not make explicit findings regarding youth: "[b]ut if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth."[40]

In a passionate dissent authored by Justice Sotomayor and joined by Justices Breyer and Kagan, the majority was accused of "gut[ting] *Miller v. Alabama* . . . and *Montgomery v. Louisiana*[.]"[41] The dissent reasoned that "[e]ven if the juvenile's crime reflects 'unfortunate yet transient immaturity,' . . . he can be sentenced to die in prison."[42] The dissent accused the majority of taking a few statements from *Miller* and *Montgomery* out of context in its effort to overturn them without appearing to ignore principles of *stare decisis*.[43]

The holding in *Jones* was that it is constitutional to sentence a criminal defendant to life without parole for homicide if the sentencing court exercises discretion in imposing the sentence and either explicitly or implicitly considers the defendant's youth as a mitigating factor.[44]

## III. DECISIONS OF THE GEORGIA SUPREME COURT

The Georgia Supreme Court made a procedural change to how it reviews murder cases on direct appeal. In *Davenport v. State*,[45] the Georgia Supreme Court announced that it would no longer conduct a *sua sponte* review of the sufficiency of the evidence supporting convictions in appeals of non-death-penalty cases.[46] It had historically reviewed evidence in cases on direct appeal for sufficiency of evidence as per

37. *Id.*
38. *Id.*
39. *Id.* at 1316.
40. *Id.* at 1319 (emphasis in original).
41. *Id.* at 1328 (Sotomayor, J., dissenting).
42. *Id.* (Sotomayor, J., dissenting).
43. *Id.* (Sotomayor, J., dissenting).
44. *Id.* at 1323.
45. 309 Ga. 385, 846 S.E.2d 83 (2020).
46. *Id.* at 386, 846 S.E.2d at 86.

*Jackson v. Virginia*,[47] regardless of whether sufficiency of evidence was raised on appeal. Going forward, the supreme court announced that it will only consider constitutional sufficiency when the appellant raises it as an issue on appeal.[48] Given that the court has only recently departed from an automatic review of cases for sufficiency purposes, there would appear to be little downside to raising sufficiency claims in most, if not all, cases.

In *Edvalson v. State*,[49] the Georgia Supreme Court held that, for a conviction for a violation of the Official Code of Georgia Annotated O.C.G.A. § 16-12-100(b)(5),[50] a defendant can be convicted only for a single act of possession of child pornography, regardless of the number of images depicted within.[51] The court reasoned that "'any visual medium' must be interpreted as a quantitative term, implying no specific quantity and having no limit."[52] The court relied upon *Coates v. State*[53] to reach its conclusion.[54] The Georgia Supreme Court in *Coates* determined that a defendant cannot be sentenced for multiple counts for each firearm found in his possession as a felon because "any firearm" can refer to both quantity and quality.[55] No matter how many guns a defendant possesses in an instance, the possession of them collectively can only be a single count of possession.[56] The case was remanded to the trial court for resentencing.[57]

The case of *Glenn v. State*[58] presented an interesting issue regarding a citizen's right to resist an unlawful arrest. This case arose from a

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47. Under the standard of *Jackson*, the United States Supreme Court viewed all evidence introduced at trial in a light most favorable to the prosecution and determined whether there was sufficient evidence to allow any rational trier of fact to find the defendant guilty beyond a reasonable doubt. 99 S.Ct. 2781 (1979).

48. *Davenport*, 309 Ga. at 392, 846 S.E.2d at 89.

49. 310 Ga. 7, 849 S.E.2d 204 (2020).

50. O.C.G.A. § 16-12-100(b)(5) (2021) ("[I]t is unlawful for any person knowingly to create reproduce, publish, promote, sell, distribute, give exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body parts engaged in sexually explicit conduct.").

51. *Edvalson*, 310 Ga at 7, 849 S.E.2d at 204.

52. *Id*. at 10, 849 S.E.2d at 207.

53. 304 Ga. 329, 818 S.E.2d 622 (2018).

54. *Edvalson*, 310 Ga. at 7–8, 849 S.E.2d at 205.

55. *Coates*, 304 Ga. at 331–32, 818 S.E.2d at 624–25; O.C.G.A. § 16-11-131(b) (2021) ("Any person . . . who has been convicted of a felony by a court of this state . . . and who receives, possesses, or transports any firearm commits a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than ten years.").

56. *Coates*, 304 Ga. at 331–32, 818 S.E.2d at 624–25.

57. *Id*. at 333, 818 S.E.2d at 625.

58. 310 Ga. 11, 849 S.E.2d 409 (2020).

probation revocation hearing. Christopher Glenn was seen walking near a school by police officers who answered a 911 call regarding a suspicious person. The responding officer called Glenn:

> '[L]et me talk to you real quick.' Glenn asked if he was being detained. The officer responded 'yes' . . . Glenn [then] . . . said, 'I'll tell you my name. It's Christopher Glenn. I'm walking home.' The officer told Glen he was 'conducting an investigation,' and that, if Glenn moved, he would be charged with obstruction and if he tried to flee, the officer would 'use force' if he had to.[59]

After a lengthy scuffle, "Glenn kicked against the passenger side door hard enough to damage the hinges and to propel himself out of the car."[60] He was subsequently arrested for violating the conditions of his probation by committing the new offenses of loitering and prowling, obstruction of a law enforcement officer, and interference with government property.[61]

The Superior Court of Clarke County determined that the evidence did not support a finding that Glenn had committed the offense of loitering and prowling.[62] And it found that Glenn had not committed the offense of obstruction of an officer because he was not under lawful arrest for loitering and prowling. And yet the trial court found by a preponderance of the evidence that Glenn had committed the offense of interference with government property by damaging the patrol car. The court revoked ninety days of Glenn's probation.[63] The Georgia Supreme Court reversed, reasoning that a person has a common law right to escape from detention following an unlawful arrest.[64] It held that:

> Glenn's right to resist an unlawful detention did not evaporate simply because he kicked the car door 'some time' after he was initially handcuffed and seated in a patrol car but before he was brought before a judicial officer or an arrest warrant was issued. Thus, the trial court cut short its analysis when it failed to consider whether Glenn used force to resist the officers' actions that was proportionate under the circumstances.[65]

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59. *Id.* at 12, 849 S.E.2d at 411.
60. *Id.* at 13–14, 849 S.E.2d at 412.
61. *Id.* at 14, 849 S.E.2d at 412.
62. *Id.* at 14–15, 849 S.E.2d at 413.
63. *Id.* at 15–16, 849 S.E.2d at 413.
64. *Id.* at 21, 849 S.E.2d at 417.
65. *Id.* at 31, 849 S.E.2d at 424.

In a similar set of cases, the Georgia Supreme Court reversed a grant of immunity to three police officers who were charged with felony murder related to the death of a suspect.[66] The deputies responded to a suspicious persons call. They encountered a suspect walking down the road, who told the deputies, "'[l]eave me alone,' 'I ain't messin' with you, man.'" After a brief conversation, the man was recorded trying to walk away from the deputies, who followed him. They ultimately tased him repeatedly while trying to handcuff him.[67] After a hearing, the Washington County State Court found that the three deputies were collectively immune from prosecution, as they were purportedly acting in self-defense.[68]

The supreme court reviewed the evidence *de novo* because the encounter was recorded.[69] It held that the encounter was a tier one encounter, meaning that deputies had no right to use force to detain the suspect, who was simply walking down the road.[70] The man purportedly took a "'defensive stance' and his demeanor became 'threatening.'"[71] However, the supreme court noted that the man had the right to resist the efforts to detain him and it remanded the case to determine if the man acted unlawfully in his resistance.[72] It also held that the trial court erred in its failure to make individualized determinations for each officer.[73]

On remand, the supreme court ordered the trial court "[t]o reach a proper conclusion on this issue . . . [and to] consider the actions taken by Martin as well as the means used by each deputy to defend himself or his fellow deputies against Martin."[74] The supreme court took issue with the trial court's apparent expansion of the immunity statute to immunize general justification versus mere acts of self-defense.[75] Missing from the

66. State v. Copeland, 310 Ga. 345, 850 S.E.2d 736 (2020).

67. *Id.* at 347–48, 850 S.E.2d at 740–41.

68. *Id.* at 346, 349, 850 S.E.2d at 740, 742.

69. *Id.*

70. *Id.* at 353, 850 S.E.2d at 745.

71. *Id.* at 354, 850 S.E.2d at 745.

72. *Id.* at 356, 850 S.E.2d at 746–47.

73. *Id.* at 357, 850 S.E.2d at 747.

74. *Id.*

75. *Id.* at 355–56, 850 S.E.2d at 746 (taking issue with the lack of a finding that the officers were using force to defend against "unlawful" force from the victim when he took a defensive stance in the face of a tier one encounter). Georgia law has extensive codified standards which define unlawful force and the limits of self-defense doctrines. Under O.C.G.A. § 16-3-24.2 (2021),

> A person who uses threats or force in accordance with Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 shall be immune from criminal prosecution therefore unless in the use of deadly force, such person utilizes a weapon the

trial court's initial analysis was a conclusion that Martin was acting unlawfully when he was tased.[76]

The holding in *Nuckles v. State*,[77] marked a significant development around the right to privacy as it relates to surveillance videos. In *Nuckles*, "Wanda Nuckles was charged with depriving James Dempsey, an elder person, of essential services and concealing his death."[78] Some of her incriminating actions were captured in a video recording that was concealed in Dempsey's room at the residential rehabilitation center where she worked.[79] She moved to exclude the recording under O.C.G.A. § 16-11-67,[80] arguing that under O.C.G.A. § 16-11-62(2)[81], she did not consent to being recorded.[82] Dempsey's son, Timothy, became suspicious of activities in his father's room at night and installed a video surveillance camera in the room. That camera captured over 400 hours of footage. After Dempsey's untimely death, Timothy retrieved and viewed the footage before forwarding it to law enforcement.[83]

The State argued that the recording was admissible under the Security Exception to O.C.G.A. § 16-11-62(2)(B), which sets out the following requirements: (1) the video recording must be made by an "owner or occupier of real property;" (2) "to use for security purposes, crime prevention, or crime detection;" (3) with a device "to observe, photograph, or record the activities of persons who are on the property or an approach thereto;" (4) in an area "where there is no reasonable expectation of privacy."[84] The Georgia Supreme Court held that Dempsey was an occupier of real property, in that he slept in and had his personal belongings in the room where the recording took place.[85] It also held that

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carrying or possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of this title.

O.C.G.A § 16-3-21 justifies the use of force in defense of self or others against "unlawful force." O.C.G.A. § 16-3-23 provides for the use of force in defense of habitation. O.C.G.A. § 16-3-23.1 requires no duty to retreat before using force in self-defense. O.C.G.A. § 16-3-24 provides for justified use of force in defense of habitation. In *Copeland,* the Georgia Supreme Court took issue with the lack of a finding that the officers were using force to defend against "unlawful" force from the victim when he took a defensive stance in the face of a tier one encounter.

76. *Copeland*, 310 Ga. at 356, 850 S.E.2d 747.
77. 310 Ga. 624, 853 S.E.2d 81 (2020).
78. *Id.* at 624, 853 S.E.2d at 83.
79. *Id.* at 626, 853 S.E.2d at 84.
80. O.C.G.A § 16-11-67 (2021).
81. O.C.G.A. § 16-11-62(2) (2021).
82. *Nuckles*, 310 Ga. at 626, 853 S.E.2d at 85.
83. *Id.* at 625, 853 S.E.2d at 84.
84. O.C.G.A. § 16-11-62(2)(B) (2021).
85. *Nuckles*, 310 Ga. at 629–30, 853 S.E.2d at 87.

Nuckles could not be said to have a reasonable expectation of privacy in the room where Dempsey was staying—that it was more her workplace than the property occupied by Dempsey.[86] She never exercised exclusive control over the room or used it for personal reasons.[87] She did not change clothes, sleep, or use the restroom there. Therefore, she could not have an expectation of privacy in the room. Thus, video evidence gathered with Timothy's hidden camera was admissible.[88]

The Georgia Supreme Court has been developing the law regarding how to handle motions to withdraw guilty pleas when those motions are filed in the same term of court in which they were entered. In *Flanders v. State*,[89] the Georgia Supreme Court held that a trial court retains jurisdiction to hear an amended motion to withdraw a guilty plea that is filed outside the term of court if the original motion was filed within the term of court.[90] In *Flanders*, the defendant entered a plea to charges of aggravated assault and two counts of cruelty to children in the first degree. After a hearing, the defendant was sentenced to serve twenty years of imprisonment followed by five years of probation. She filed her motion to withdraw the guilty plea in the same term of court in which the plea was entered but amended it after the term of court expired. The trial court refused to hear amended claims, as they were filed outside the term of court.[91] The court of appeals, relying on *Matthews v. State*,[92] upheld the trial court's decision.[93] However, the supreme court determined that *Matthews* was wrongly decided and overturned it.[94] The case was remanded with instructions for the trial court to hear the claims raised in the amended motion.[95]

In another case involving the right to withdraw a guilty plea, *Jordan v. State,*[96] the Georgia Supreme Court held that when a defendant is charged with a capital offense—such as murder but the state does not pursue the death penalty—the defendant retains the right to withdraw a guilty plea before sentencing.[97] In *Jordan*, four days into a trial, the defendant decided to enter a guilty plea to felony murder. The judge

86. *Id.* at 632–33, 853 S.E.2d at 89.
87. *Id.* at 633, 853 S.E.2d at 89.
88. *Id.*
89. 310 Ga. 619, 852 S.E.2d 853 (2020).
90. *Id.* at 619, 852 S.E.2d at 854.
91. *Id.* at 620, 852 S.E.2d at 855.
92. 295 Ga. App. 752, 673 S.E.2d 113 (2009).
93. *Flanders*, 310 Ga. at 620–21, 852 S.E.2d at 855.
94. *Id.* at 621, 852 S.E.2d at 855.
95. *Id.* at 623, 852 S.E.2d at 857.
96. 310 Ga. 703, 854 S.E.2d 548 (2021).
97. *Id.* at 705, 854 S.E.2d at 551.

accepted the plea and set a sentencing hearing to be held later. The jury was dismissed. However, before that sentencing hearing could be held, the defendant decided to withdraw his guilty plea.[98]. Citing *Fair v. State*,[99] the trial court denied the motion.[100] However, the supreme court reversed, finding that *Fair* did not apply because the trial court failed to advise the defendant that he would be waiving the right to withdraw his guilty plea during the plea colloquy.[101]

In *Jefferson v. State*,[102] the Georgia Supreme Court held that a defendant can directly appeal a trial court's order on a motion for new trial when the order grants a new trial as to some counts due to insufficiency of evidence but denies the new trial as to other counts.[103] In *Jefferson*, the defendant was convicted of two counts of kidnapping and two counts of armed robbery along with other offenses. At the motion for new trial hearing, the State agreed that there was insufficient evidence on armed robbery; therefore, those counts were vacated. With respect to the other counts, the Fayette County Superior Court denied the motion for new trial.[104] The order was a final and appealable order under O.C.G.A § 5-6-34(a).[105] The supreme court reversed the court of appeals and remanded the case to the court of appeals to hear.[106]

In *Moss v. State*,[107] the Georgia Supreme Court affirmed a life sentence without parole for a murder committed by a seventeen-year-old minor.[108] The case offered a glimpse at how courts are likely to consider juvenile sentencing in the wake of *Jones*.[109] The sentencing judge in *Moss* made copious findings of fact, reasoning that his behavior "does not reflect an immature youth who merely makes impulsive and reckless decisions on occasion, or has an underdeveloped sense of responsibility; rather, it betrays one who is deliberate, malevolent, and exhibits a depraved heart."[110] Further, the sentencer reasoned, "he thus falls into that 'rarest of juvenile offenders . . . whose crimes reflect permanent incorrigibility;

98. *Id.* at 703–04, 854 S.E.2d at 549–50.
99. 245 Ga. 868, 268 S.E.2d 316 (1980).
100. *Jordan*, 310 Ga. at 704, 854 S.E.2d at 550.
101. *Id.* at 705–07, 854 S.E.2d at 551–52.
102. 310 Ga. 725, 854 S.E.2d 528 (2021).
103. *Id.* at 726, 854 S.E.2d at 530.
104. *Id.* at 725, 854 S.E.2d at 529.
105. *Id.* at 726, 854 S.E.2d at 530; *see* O.C.G.A. § 5-6-34(a)(2021).
106. *Id.*
107. 311 Ga. 123, 856 S.E.2d 280 (2021).
108. *Id.* at 124, 856 S.E.2d at 282.
109. *Jones,* 141 S.Ct. at 1307. To be sure, *Moss* slightly predates *Jones*. However, the analysis in *Moss* is similar to the Georgia Supreme Court's reasoning in *Jones*.
110. *Moss*, 311 Ga. at 131, 856 S.E.2d at 287.

whose crimes reflect irreparable corruption."[111] Certainly in the wake of *Jones*, the trial court in *Moss* made sufficient findings to sustain a sentence of life without parole.

The court in *Duke v. State*,[112] answered an interesting question: is a defendant who is represented by *pro bono* counsel but who is otherwise indigent, entitled to state-funded investigators and experts to aid in the preparation of his defense?[113] The Georgia Supreme Court held that defendants in this situation are entitled to such state-funded assistance.[114] In a dissenting opinion, Justice Bethel opined that *pro bono* counsel, to be eligible for public assistance in any form, must enter some sort of contract with the Georgia Public Defender Council.[115]

Finally, in *Booth v. State*,[116] the Georgia Supreme Court took up an interesting issue: when does jury service conclude?[117] Ms. Booth was found guilty of felony murder and neglect of an elder person. Initially, Ms. Booth was convicted of felony murder, neglect of an elder person, involuntary manslaughter, and reckless conduct. The judge dismissed the jurors and said, "that concludes your jury service." Defense counsel then objected that the verdicts were mutually exclusive. At which point, the judge called the jury back into the courtroom (they had not left the courthouse yet) and sent them to deliberate.[118] This case raised two issues: were the verdicts mutually exclusive? They, in fact, were not.[119] Secondly, was it proper to recall the jury? Yes. Because per O.C.G.A. § 17-9-40,[120] they had not dispersed and were available for further deliberations.[121]

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111. *Id.* at 131; 856 S.E.2d at 287 (quoting Veal v. State, 298 Ga. 691, 702, 784 S.E.2d 403, 412 (2016)).

112. 311 Ga. 135, 856 S.E.2d 250 (2021).

113. *Id.* at 135, 856 S.E.2d at 252. Note that this case is the subject of much media attention, including the *Up and Vanished* podcast. *Up and Vanished,* TENDERFOOT TV (Aug. 7, 2016) at https://season1.upandvanished.com/listen2/.

114. *Id.* at 135, 856 S.E.2d at 252.

115. *Id.* at 154, 856 S.E.2d at 264–65 (Bethel, J., dissenting).

116. 311 Ga. 374, 858 S.E.2d 39 (2021).

117. *Id.* at 374, 858 S.E.2d at 40.

118. *Id.* at 374–75, 858 S.E.2d at 40–41.

119. *Id.* at 376–77, 858 S.E.2d at 41–42.; *see also* State v. Springer, 297 Ga. 376, 774 S.E.2d 106 (2015).

120. Under this code provision, "[a] verdict may be amended in mere matter of form after the jury have dispersed; but, after it has been received, recorded, and the jury dispersed, it may not be amended in matter of substance, either by what jurors say they intended to find or otherwise." O.C.G.A. § 17-9-40 (2021).

121. *Booth*, 311 Ga. at 377, 858 S.E.2d at 42.

## IV. THE GEORGIA LEGISLATURE

Two new laws are worth reviewing. First, the Georgia Legislature passed House Bill 479,[122] which went into effect on July 1, 2021, and places limits on the rights of private citizens to make arrests.[123] Under O.C.G.A. § 17-4-80,[124] the rights of citizens to detain others is limited to retail or restaurant owners to stop a theft, a security guard, or a weight inspector. Even then, "[a] private person who detains an individual under this Code section shall either release said individual or, within a reasonable time, contact the law enforcement unit with appropriate jurisdiction."[125] And, except in certain circumstances, "a person acting pursuant to this Code section shall not use force which is intended or likely to cause great bodily harm or death, but may use reasonable force to the extent that he or she reasonably believes is necessary to detain an individual."[126]

Georgia Senate Bill 105[127] helps ensure that those eligible for early release from probation due to behavioral incentive dates can enjoy that release. The new law, codified as part of O.C.G.A. § 17-10-1,[128] provides a unified process by which individuals who have served at least two years on probation and have successfully met a list of eligibility criteria can seek early termination of their probationary sentence. The statute provides that "[a]ctive probation supervision shall terminate in all cases no later than two years from the commencement of active probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown."[129]

## V. CONCLUSION

These decisions and statutory changes 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 lawyers alike to always be aware of cases granted certiorari by the courts and be aware of the impact their decisions will have on the cases argued across this

122. Ga. H.R. Bill 479, Reg. Sess. (2021).

123. *Id*.

124. O.C.G.A. § 17-4-80 (2021).

125. O.C.G.A. § 17-4-80(c) (2021).

126. O.C.G.A. § 17-4-80(d)(2) (2021).

127. Ga. S. Bill 105, Reg. Sess. (2021) (enacted).

128. O.C.G.A. § 17-10-1 (2021).

129. O.C.G.A. § 17-10-1(a)(B)(ii)(2)(A) (2021). Probation cannot be terminated automatically while a person is on active probation with unpaid restitution, is convicted under the Georgia Street Gang Terrorism and Prevention Act, or who is required to register as a sex offender.

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.