IN THE SUPREME COURT OF GEORGIA

GEORGIACARRY.ORG, INC., et.al.	)	
	)	
Appellants,	)	
	)	
v.	)	Case No. S18G1149
	)	
ATLANTA BOTANICAL GARDEN, INC.,	)	
	)	
	)	
Appellee	)	

BRIEF OF APPELLANTS

Appellants GeorgiaCarry.Org, Inc. and Phillip Evans state the following as their opening Brief.

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1. STATEMENT OF FACTS AND PROCEEDINGS BELOW

A. Introduction

This is the third appearance of this case before this Court. The history of this case is discussed more fully below in Part 1B.

In issuing certiorari in this case, this Court limited the issue on appeal to whether O.C.G.A. § 16-11-127(c) permits a private organization that leases property owned by a municipality to prohibit the carrying of firearms on the leased premises.

Appellant Phillip Evans ("Evans") is a resident of Gwinnett County[1], and a member of the Atlanta Botanical Garden (the "Garden"). R5. The Garden[2] operates a botanical garden open to the public on property leased from the City of Atlanta. *Id*. Evans has a Georgia weapons carry license ("GWL") issued pursuant to O.C.G.A. § 16-11-129. *Id.* On October 5, 2014, Evans and his wife and children visited the Garden for about three hours while Evans was carrying a

[1] An appellate court reviewing a trial court's order on summary judgment does so *de novo*, considering the facts in the light most favorable to the non-moving party. *Lau's Corp. v. Haskins*, 261 Ga. 491, 495 (1991). The facts stated in this brief are thus taken from the Verified Complaint, which was made under oath and is tantamount to an affidavit.

[2] For ease of reference, the Appellee itself and the botanical garden that it operates are referred to interchangeably in this brief as the "Garden."

firearm openly in a holster on his waistband. *Id.* While there, Evans purchased a one-year family membership to the Garden. *Id.* No one on the Garden's staff objected to Evans' firearm. *Id.* On October 12, 2014, Evans and his wife and children visited the Garden again and Evans was again openly wearing a firearm. *Id.* After entering the Garden, Evans was accosted by Jason Diem, of the Garden's management team. R7. Diem called the Garden's security team, and a security officer detained Evans while Atlanta police were called. *Id.* Diem told Evans that Evans could not carry a firearm at the Garden. *Id.* An Atlanta police officer arrived, and the officer escorted Evans off the Garden property at Diem's request. *Id.* After this incident, Evans contacted the Garden CEO, Mary Pat Matheson, who told Evans that only police officers are allowed to have weapons at the Garden. *Id.* Evans intends to continue to visit the Garden and desires to carry a weapon while he does so. *Id.* Evans is a member of Appellant GeorgiaCarry.Org, Inc. R5. GeorgiaCarry.Org, Inc.'s mission is to foster the rights of its members to keep and bear arms. R8. GeorgiaCarry.Org, Inc. has other members that visit the Garden, who have GWLs, and who desire to carry weapons while they are at the Garden. *Id.*[3]

B. Proceedings Below

GCO commenced this action on November 12, 2014. R11. In the Verified

[3] Evans and GeorgiaCarry.Org, Inc. are referred to collectively as "GCO."

Complaint, GCO sought declaratory and injunctive (both interlocutory and permanent) relief for violations of state law. R8-9. On May 19, 2015, the trial court issued a written opinion and order dismissing GCO's claims. R68-72, generally. In its order, the trial court ruled that GCO "impermissibly asks this Court to interpret a criminal statute." *Id.* The trial court further ruled that GCO impermissibly sought declaratory relief regarding how the Garden "may or should act." *Id.* The trial court also ruled that GCO was seeking an injunction to "restrain or obstruct enforcement of criminal law." *Id.* The trial court therefore dismissed all claims. *Id.* GCO and Evans filed a Notice of Appeal on June 2, 2015. R73.

On May 9, 2016, this Court issued a ruling that the trial court erroneously dismissed the case and held that: 1) a declaratory judgment action is an available remedy to test the validity and enforceability of a statute where an actual controversy exists; 2) a declaration that Evans (or similarly licensed individuals) may carry on the Garden's premises would require no action on the part of the Garden, as it would simply delineate what the applicable legal authority requires or prohibits; and 3) a request by GCO for an interlocutory injunction does not improperly implicate the administration of criminal law. R90.[4]

On remand, GCO moved for summary judgment, as did the Garden. The

[4] The Court's opinion is reported at 299 Ga. 26, 785 S.E.2d 874 (2016).

trial court granted summary judgment to the Garden and denied summary judgment to GCO on September 15, 2016. R197-99**.** GCO filed a Notice of Appeal on September 16, 2016. R1. On March 20, 2017, this Court transferred this case to the Court of Appeals in case No. S17A1136. On March 14, 2018, the Court of Appeals affirmed, in a concurring opinion by Chief Judge Dillard, joined by Judge (now Justice) Ellington, which called GCO's "textualist argument attractive."

On April 22, 2018, GCO filed a Petition for Certiorari, which this Court granted on January 7, 2019. This Court limited briefing to the following issue:

> Whether O.C.G.A. § 16-11-127(c) permits a private organization that leases property owned by a municipality to prohibit the carrying of firearms on the leased premises.

2. STATEMENT OF JURISDICTION

This Court has jurisdiction because it granted GCO's Petition for Certiorari.

3. ARGUMENT AND CITATIONS TO AUTHORITY

A. Standard of Review

The appellate court reviews questions of law *de novo. Luangkhot v. State,* 292 Ga. 423 (2013). Summary judgments enjoy no presumption on appeal, and an appellate court must satisfy itself *de novo* that the requirements of O.C.G.A. § 9-11-56(c) have been met. *Cowart v. Widener*, 287 Ga. 622, 624 (2010).

B. Summary of Argument

The trial court erroneously granted summary judgment to the Garden by applying tax law principles in a non-tax context, and by failing to consider the

history of progressive changes to the statute at issue in this case. The trial court also failed to consider that the City of Atlanta itself lacked the power to regulate firearms on its property, so such power could not have been transferred via lease to the Garden as Atlanta's tenant.

I. The trial court erred in its interpretation of O.C.G.A. 16-11-127 (c)

In order to evaluate the central issue in context, it is necessary to consider the history of legislation on the subject of control of carrying weapons.

The primary statute at issue in this case is O.C.G.A. § 16-11-127(c). Prior to 2010, and for 140 years, Georgians were significantly limited in the carrying of firearms and other weapons by the Jim Crow "Public Gathering" law, Ga.L. 1870, p. 421, §§ 1, 2. That law prohibited the carrying of weapons to or while at athletic or sporting events, churches or church functions, publicly owned or operated buildings, establishments at which alcoholic beverages were sold for consumption on the premises, holiday barbecues,[5] the grounds of an automobile auction,[6] parking lots of any of the foregoing,[7] and reasonable distances away from such places (defined to be at least 200 yards).[8] Possession

[5] *Wynne v. State,* 123 Ga. 566 (1905).
[6] *Jordan v. State*, 166 Ga.App. 417 (1983).
[7] *Hubbard v. State,* 210 Ga.App. 141 (1993).
[8] *Bice v. State,* 109 Ga. 117 (1899); *Culberson v. State*, 119 Ga. 805 (1904); *Amorous v. State,* 1 Ga.App. 313 (1907); *Farmer v. State,* 112 Ga.App. 438 (1965).

of a GWL[9] was not a defense to a prosecution for violating the Public Gathering law. *Sockwell v. State,* 27 Ga.App. 576, 109 S.E.531 (1921).

In 2010, the legislature repealed the Public Gathering law and replaced it with a new regulatory regime for carrying weapons, with a short, defined, and discrete list of places where the people, including GWL holders, could not carry a weapon. Ga.L. 2010, p. 963, § 1-3 (SB 308). SB 308 also enacted a statement of public policy, that a GWL holder "shall be authorized to carry a weapon . . . ***in every location in this state*** not listed [in the aforementioned list of prohibited places]." O.C.G.A. § 16-11-127(c) (2010 version) (emphasis added).

This grant of authority to carry in every location in Georgia contained a contingent exception:

> [P]rovided, however, that private property owners or ***persons in legal control of property through a lease***, rental agreement, licensing agreement, contract, or any other agreement to control such property shall have the right to forbid possession of a weapon or long gun on their property….

Id. [emphasis supplied]. It is important to note that this 2010 statutory language made a distinction between fee owners and interests in land less than a fee (e.g., lessees/tenants).

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[9] Throughout Georgia's history, licenses issued pursuant to O.C.G.A. § 16-11-129 and its predecessor statutes have been called pistol toter's permits, firearms licenses, and weapons carry licenses. The distinctions are unimportant for purposes of this Brief and all such licenses are referred to collectively as GWLs, regardless of the time period in question.

The legislature amended this language in 2014, inserting the word "private" three times within one sentence, so that it currently reads[10]:

> [P]rovided, however, that private property owners or persons in control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to ~~forbid~~ exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21…

Ga.L. 2014, p. 599, § 1-5 (HB 60). The 2014 changes maintained the distinction between fee owners and property interests less than fee.

As already noted, the meaning of O.C.G.A. § 16-11-127(c) is the central issue in this case. GCO argues that the central core and purpose of the 2014 changes in HB 60 was to prohibit private entities that lease property from a public entity from regulating firearms on the property. The Court of Appeals ruled that such a lessee is in fact leasing private property, on the theory that the public property becomes private (at least for tax purposes) when leased by a private entity.

It is undisputed that the Garden leases property from the City of Atlanta. The Court of Appeals ruled that the Garden, as a private entity that leases property, is a person in control of private property through a lease. *GeorgiaCarry.Org, Inc. v.*

[10] Language inserted by the bill is shown in underlined font and language deleted by the bill is shown in ~~strikethrough~~ font.

Atlanta Botanical Garden, Inc., 345 Ga.App. 160, 812 S.E.2d 527 (2018) ("The plain and unambiguous language of O.C.G.A. § 16-11-127(c) grants persons in legal control of private property through a lease the right to exclude individuals carrying weapons … and the land leased by the Garden [is] private property.")

The Court of Appeals relied on *Delta Airlines v. Coleman*, 291 Ga. 12, 16, 131 S.E.2d 768 (1963) ("When any estate in public property is disposed of, it loses its identity of being public property and is subject to taxes ***while in private ownership*** just as any other privately owned property.") [Emphasis supplied]. *Delta Airlines* referred to such a leasehold estate as being in the hands of "a private owner." *Id.* Thus, even though the Court of Appeals found the Garden to be a person in control of private property through a lease, it relied on language describing that arrangement as ***private ownership***.

The upshot of the Court of Appeals' ruling is that the Court ignored the distinction drawn by the legislature. If the legislature had intended the meaning found by the Court of Appeals, the legislature would not have made a distinction between "private property owners" and "persons in control of private property through a lease." The Court of Appeals used those phrases or concepts interchangeably, but the legislature did not. The only way to interpret the statute so as not to make the two phrases redundant with one another is to conclude that a "private property owner" does not include a "person in control of private

property through a lease" (when the lessee is a private person).

The tax laws levy taxes against those enjoying or using the property. That is, taxes are applied against possession of property. So the property "owner" for tax purposes is the person possessing (i.e., using and enjoying the property). The legislature, when enacting O.C.G.A. § 16-11-127(c), focused on the fee owner of the property. The difference is that "private" in tax cases applies to the possessor and "private" in O.C.G.A. § 16-11-127(c) applies to the fee owner. That is, a "private property owner" under O.C.G.A. § 16-11-127(c) is a private person (i.e., non-governmental) that owns the property in fee. A "person in legal control of private property through a lease" is a person who leases land from a private person that owns the property in fee. The public/private nature of the lessee (as opposed to the landlord/fee owner) is not relevant for the purpose of O.C.G.A. § 16-11-127(c) the way it is for taxes.

Thus, there are two conventions at play for what "private property" means. The word "private" could refer to the possessor or it could refer to the fee owner. There is nothing inherently right or wrong about either convention. The problem arises when one tries to apply one convention to the other scenario.

A familiar canon of statutory construction is that no words should be read to be surplusage or nugatory. *Lucas v. Coulter, Inc.*, 303 Ga. 261, 811 S.E.2d, 369, 371 (2018) ("In interpreting a statute, we apply the fundamental rules of statutory

construction that requires us to … avoid a construction that makes some language mere surplusage.") *See also,* Scalia, Antonin and Garner, Bryan A., *Reading Law: The Interpretation of Legal Texts.* Thompson/West: 2012, p. 174 ("If possible, every word and every provision is to be given effect…. None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.")

With this canon in mind, the only reading of the statutory language of HB 60 that does not render "persons in legal control of private property through a lease" to be surplusage is that the antecedent term "private property owners" does not include private lessees of property owned in fee by another.

The Court of Appeals' interpretation in the present case violates the "surplusage" canon of statutory construction. In order to give meaning to each word and phrase used by the legislature, one must reject the tax cases relied upon by the Court of Appeals as inapposite to the instant case. Applying the phrase "private property" as the legislature used it, after passage of SB 308 in 2010, the Garden would have been a "person in legal control of property through a lease" and not a "private property owner." After the passage of HB 60 in 2014, the Garden was still a person in legal control of property through a lease, but it was not "a person in legal control of ***private*** property through a lease." With the changes in HB 60, the Garden, as a lessee of public property, had no right to ban

firearms from the land it leases.

Under the Court of Appeals' ruling, applying the *Delta* case must lead to the conclusion that the Garden is a private property owner. *Delta* says that (albeit for tax purposes), a leasehold interest in private hands is "private property" for as long as it is "owned." Under the 2010 version of the statute (under the Court of Appeals' theory), therefore, the Garden was a "private property owner." "Persons in control of property through a lease" must only have applied to public property, i.e., property leased by a public entity.

We know, however, that public entities already were prohibited from regulating carrying firearms. So the "persons in control of property through a lease" could not have referred to public entities (thus making that phrase meaningless). O.C.G.A. § 16-11-173 (and its predecessor statute, the former O.C.G.A. § 16-11-184), provides, in pertinent part:

> [N]o … municipal corporation, by zoning, by ordinance or resolution, or by ***any other means*** … shall regulate ***in any manner*** … (B) The possession, … [or] carry … of firearms or other weapons….

O.C.G.A. § 16-11-173(b) [emphasis supplied]. The courts of this State have interpreted this Code section quite broadly against municipalities in general and the City of Atlanta in particular.

In *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga.App. 713 (2002), the Court of Appeals ruled that the "in any manner" language of O.C.G.A. § 16- 11-173

preempted Atlanta from using the tort system in an attempt to control behavior related to firearms. The Court said, "The City may not do indirectly that which it cannot do directly."[11] *Id.*

In *GeorgiaCarry.Org, Inc. v. Coweta County*, 288 Ga. App. 748 (2007), the Court of Appeals ruled that Coweta County was preempted by O.C.G.A. § 16-11-173 from regulating the carrying of firearms "in any manner" and it could not, therefore, regulate or prohibit the carrying of firearms in county parks or recreation facilities.

The Superior Court of Fulton County, relying on the *Coweta County* opinion, issued a permanent injunction against the City of Atlanta from enforcing its ordinance prohibiting carrying firearms in city parks (including Piedmont Park in which the Garden is located). *GeorgiaCarry.Org, Inc. v. City of Atlanta*, Case No. 2007CV138552 (Fulton County Superior Court, May 19, 2008) *Order Granting Motion for Summary Judgment in Favor of Plaintiffs and Against the City of Atlanta.* A copy of the Superior Court Order is attached for the Court's convenience as Exhibit 1.

The preemption cases cited above all predate SB 308 in 2010. The

[11]This language is pertinent because Atlanta may not ban firearms in Piedmont Park directly. It also cannot ban firearms indirectly in Piedmont Park by any "other means," such as using a lease or other agreement to control access to such property.

legislature therefore passed SB 308 knowing that the City of Atlanta was generally and specifically prohibited by law from regulating the carrying of firearms on its property, including Piedmont Park in which the Garden is located.

The above-described analysis leads one to wonder what the purpose was of the 2014 changes. When the General Assembly passed HB 60, changing the language of the statute, it had to have intended to make a statutory change. The legislative change, adding the word "private" in three locations within the same sentence, had to mean ***something***. The only meaningful way to interpret that change is to conclude that it intended to remove the right to regulate firearms from those that choose to lease land from public entities rather than from private owners. The Garden has offered no other reasonable (or unreasonable) explanation for the 2014 legislative change, and the trial court below inexplicably ignored the 2014 legislative change altogether.[12]

When interpreting statutes, Georgia courts must abide by the "golden rule" of statutory construction, which "requires that we follow the literal language of the statute unless doing so produces contradiction, absurdity or such

[12] The trial court questioned the Garden's attorney at the hearing on the cross motions for summary judgment, expressing skepticism over the Garden's inability to provide an alternative explanation for the wording of HB 60. Tr. Vol. 2, pp. 8-9 ("I understand that argument, but I don't think it's very helpful.") Ultimately, however, the trial court did not address the 2014 Code changes contained in HB 60.

an inconvenience as to insure that the legislature meant something else." *Coweta County*, 288 Ga. App. 748. In the instant case, this Court may interpret without contradiction, absurdity, or inconvenience that the General Assembly intended to limit the then-existent right of all leaseholders to forbid firearms or other weapons to leaseholders of private property only.

The courts "must presume that the legislative addition of language to the statute was intended to make some change to existing law." *Res-GA Hightower, LLC v Golshani*, 334 Ga. App. 176, 778 S.E.2d 805, 809 (2015) (citation omitted) ("[T]he addition of previously nonexistent language [means that the court] must presume that the amendments were intended to change the law."); *Board of Assessors v. McCoy Grain Exchange*, 234 Ga.App. 98, 100 (1998); *Wausau Insurance Co. v. McLeroy*, 266 Ga. 794, 796 (1996) ("[W]e must presume the legislative addition of language to the statute was intended to make some change in the existing law."); *TEC America, Inc. v. DeKalb County Board of Tax Assessors*, 170 Ga.App. 533, 537 (1984) ("It would be anomalous to construe a subsequent *addition* to the body of the law on a subject as evincing no legislative intent to effect a change in the law as it had formerly existed.") [emphasis in original]; *C.W. Matthews Contracting Company v. Capital Ford Truck Sales, Inc.*, 149 Ga.App. 354, 356 (1979). Any presumption may be rebutted by evidence, of course, but no such rebuttal evidence was offered by the

Garden.

In *Nuci Phillips Memorial Foundation, Inc. v. Athens-Clarke County Board of Tax Assessors*, 288 Ga. 380, 703 S.E.2d 648 (2010), this Court held that merely "from the addition of words it may be presumed that the legislature intended some change in the existing law." *Id*. at 650 (citation and punctuation omitted). The appellant, however, was able to rebut that presumption by placing into evidence the Act's preamble, which stated that the legislature only intended "to clarify" the law. This Court held "we must assume that by adding new language to the statute, the General Assembly intended" to change the existing law, but that "the preamble to the 2007 amendment clearly rebuts the presumption of change." *Id*. at 651. As pointed out above, the Garden did not even make an attempt to rebut this presumption, but, even if it had, the preamble to HB 60 clearly shows the General Assembly intended a massive, comprehensive, and substantive change to existing law. The preamble itself is a page and a half long, and, among its many provisions, is listed "to change provisions relating to carrying weapons" in multiple places in the preamble. It would be a difficult task indeed to reconcile HB 60's preamble with the notion that the General Assembly did not indeed intend to change existing law when it passed HB 60. HB 60 was a comprehensive overhaul with wholesale changes liberalizing many provisions relating to carrying weapons.

In *McCoy Grain*, the Court of Appeals said that the existence of a preamble expressing an intent to change the law would support the notion that an insertion of words gives rise to a presumption of a change in the law. 234 Ga.App. 100. Given the lengthy preamble in HB 60 stating an intent the change law relating to carrying weapons, and not a statement of an intention just to clarify the law, it must be presumed the legislature meant to change the law when it inserted the word "private" several times to modify what leased property was subject to the exception.

The trial court ruled that, because a leasehold interest in the hands of a private person is taxed as private property, the phrase "private property" includes all leaseholds in the hands of a private person. There is, however, no reason for believing the legislature intended to use this meaning.

At least one trial court in this state has interpreted O.C.G.A. § 16-11-127(c) the way GCO urges. In 2014, the State Court of Clayton County tried Jeffrey Leising before a jury on a three-count accusation stemming from Leising's attendance at a gun show at the Georgia Farmer's Market while armed. The evidence showed the building and grounds were "owned" (in fee) by the state Department of Agriculture and leased to a private entity, Georgia Gun Runners. During the trial the defense moved for a directed verdict.

The only count of interest for the present case was Count 2 – Criminal

Trespass. The state's theory was that Georgia Gun Runners prohibited people from entering the exhibit hall while armed, and Leising therefore entered illegally (because he was armed). For the directed verdict motion, the parties argued the application of O.C.G.A. § 16-11-127(c). After hearing arguments on the motion, the trial court said, "Again, the unrebutted evidence in this court today is that this building was owned by the Department of Agriculture. So, by definition, it was not a private property owner…. [T]he only evidence in this case is this was not private property, it was publicly owned property…. It does not apply in any way that I see to publicly owned property leased to a private group under subsection (c)." Transcript of Proceedings, p. 21, ll. 13-20; p. 22, ll 6-8, *State v. Leising*, Case No. 2014CR06102 (State Court of Clayton County, October 29, 2014). A copy of the Transcript of Proceedings is attached to this Brief for the Court's convenience as Exhibit 2.[13]

Leising was acquitted by directed verdict in part based on the trial court's interpretation of the statute consistent with the interpretation urged by GCO. Because Gun Runners leased property from the state, it was not a person in control of ***private property*** through a lease, so it could not ban guns. The state did not appeal.

Constitutional Issues With O.C.G.A. § 16-11-127(c)

[13] Pages 21 and 22 of the transcript are pages 52 and 53 of this Brief.

The Court of Appeals mentioned potential constitutional issues with the interpretation of O.C.G.A. § 16-11-127(c) urged by GCO. These issues were not raised in the trial court and were not ruled upon by the trial court. Such issues, therefore, cannot be ruled upon here. *Flott v. Southeast Permanente Medical Group*, 288 Ga.App. 730, 732 656 S.E.2d 242, 244 (2007) ("A constitutional issue cannot be considered when asserted for the first time on appeal but must be clearly raised in the trial court and distinctly ruled upon there. Contentions regarding a constitutional issue which were not made are thus not passed upon here.") That said, this Court cannot ignore the provisions of the Constitution, so the Court of Appeals' concerns will be discussed briefly.

The Court of Appeals[14] said GCO's interpretation of the statute raises "serious questions" of constitutionality because of takings issues and due process issues. These two issues will be discussed in turn.

Takings

The Takings Clause of the 5th Amendment says, "nor shall private property be taken for public use without just compensation." The Takings Clause "does not prohibit the taking of private property, but instead places a condition on the exercise of that powers." *First Evangelical Lutheran Church of Glendale v.*

[14] This discussion is in Chief Judge Dillard's concurring opinion, but because that opinion was joined by now-Justice Ellington, a majority of the panel adopted it. GCO therefore treats it as part of the Court's "majority" opinion.

County of Los Angeles, 482 U.S. 304, 314, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987). It "is designed not to limit the government interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking." *Id.*, p. 315. The question arises, of course, whether the property being "taken" is private in the first place (which is the core issue of this case). If this Court rules that it is not private property, as GCO urges, then it would be difficult to conclude that private property has been "taken."

Moreover, the present case is not one of a literal change in title of property by eminent domain. A takings requires a permanent physical occupation, a regulation that destroys all the use of the property, or a regulation that seriously diminishes the value of the property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 436 (1982); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

In the present case, there is no permanent physical occupation of the type described in *Loretto.* Because there is no eminent domain, and there is not even a permanent physical occupation, any "takings" would have to be one of a potential "regulatory takings." A regulatory taking occurs when the state deprives a property owner of all economically beneficial use of his property.

Lucas 1019. There is nothing in the record to suggest that the statute at issue deprives the Garden of ***any*** economically beneficial use of the property. Indeed, the Garden's use of the property is exactly the same whether visitors carry weapons at the property or not. To the extent that the statute at issue works a regulatory takings, the effect on the economically beneficial use of the property is *de minimis.*

Moreover, the General Assembly effects a taking where it enacts legislation that presents a "significant detriment" to the property owner and such legislation is "insubstantially related to the public health, safety, morality, and welfare." *Gule v. Holcomb Bridge Road Corp.*, 238 Ga. 322, 232 S.E.2d 830 (1977). It is self-evident the General Assembly has a substantial interest in assuring that fundamental rights (including the right to keep and bear arms) guaranteed by the U.S. and Georgia Constitutions are protected. Such rights are vital to public health, safety, morality and welfare. The legislation at issue likewise is not a significant detriment to the lessee or the property owner.

Moreover, the Garden is no doubt a place of "public accommodation"[15]

[15] Any place of exhibition of entertainment is a public accommodation. 42 U.S.C. § 2000a(a)(3). The Garden states on its web site that its mission includes displaying plants for enjoyment. https://atlantabg.org/about-the-garden/. In addition, any facility within the premises of which is physically located a "covered establishment" is a public accommodation when it holds itself out as serving patrons in the covered establishment. 42 U.S.C. § 2000a(a)(4). Dining facilities are "covered establishments" and the Garden has a restaurant ("Longleaf") on its

and therefore already subject to significant restrictions on its selection of patrons under the Civil Rights Act. The Court of Appeals did not discuss how a regulation preventing denying access to the Garden on account of religion or national origin does not raise serious constitutional concerns, but a regulation preventing denying access on account of being armed does. In fact, because the Supreme Court of the United States has ruled that keeping and bearing arms is a fundamental constitutional right[16], presumably Congress has the power to add lawfully armed citizens to the list of protected classes in the Civil Rights Act.

Finally, even if there were a takings, it is not unconstitutional to take private property for public use. It is only unconstitutional to do so without just compensation. A takings claim is not ripe unless and until the private property owner exhausts his state remedies. *Bickerstaff Clay Products Co. v. Harris County,* 89 F.3d 1481, 1491 (11th Cir. 1996) ("A property owner cannot claim a violation of the [Takings] Clause unless the state provides the landowner no procedure (such as an action for inverse condemnation) for obtaining just compensation.")

Georgia law recognizes inverse condemnation claims. *Shealy v. Unified Government of Athens-Clarke County,* 244 Ga.App. 853, 855, 537 S.E.2d 105,

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premises. https://atlantabg.org/plan-your-visit/dining-at-the-garden/

[16] *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.E.2d 637 (2008).

108 (2000) ("An inverse condemnation claim arises when the governmental entity creates a condition on private property… that amounts to a taking without compensation.") Because the Garden has an adequate state law remedy, if indeed a takings has occurred, there is no constitutional violation and the Court of Appeals erred in finding a serious question of unconstitutionality.

Due Process

The Court of Appeals also did not elaborate on how the statute might create a due process issue. Because the governmental action at issue is legislative, the Garden received all the process to which it was constitutionally entitled. *75 Acres, LLC v. Miami-Dade County, Fla.*, 338 F.3d 1288, 1294 (2003) *citing Londoner v. City & County of Denver,* 210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 1103 (1903) and *BiMetallic Investment Co. v. State Board of Equalization,* 239 U.S. 441, 36 S.Ct. 141, 60 L.Ed. 372 (1915) ("When the legislature passes a law which affects a general class of persons, those persons have received all procedural due process – the legislative process.")

If the Court of Appeals were referring to substantive due process, again that issue would not lie. Substantive due process only applies to fundamental rights under the U.S. Constitution. *Greenbriar Village, LLC v. Mountain Brook, City,* 345 F.3d 1258, 1262 (11th Cir. 2003) ("The substantive component of the Due Process Clause protects those rights that are fundamental, that is, rights that

are implicit in the concept of ordered liberty. Fundamental rights are those rights created by the Constitution. Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from independent sources such as state law.") [Internal citations omitted]. The Garden's property rights are not, therefore, protected by substantive due process.

Even applying a substantive due process analysis, unless a fundamental right is at stake or the complaining party is a member of s suspect class, a rational basis test is applied. *Georgia v. Old South Amusements, Inc.*, 275 Ga. 274, 564 S.E.2d 710 (2002). The Court of Appeals did not indicate its belief that the right to exclude people from property on the basis of their being armed is a fundamental right[17], and the Garden is not a member of a suspect class. Under a rational basis test, the state certainly has an interest in fostering what ***is*** a fundamental right: the right to keep and bear arms.

CONCLUSION

[17] *Amicus* Metro Atlanta Chamber filed a brief in the Court of Appeals in which it referred to the right at issue as the right to control one's property. But that is an overbroad description. The government interferes frequently in the control of private property, in the form of zoning, building codes, civil rights provisions, nuisance laws, noise ordinances, and other laws. Even the right to exclude generically is too broad a description. The only "right" actually at issue in this case is the right to exclude people from public property leased to a private entity solely on account of the people's carrying weapons.

The history of legislation regulating carrying firearms in this State makes clear the legislature's intention as applied to the present case. The legislature had already, as a matter of public policy, "authorized" the carry of weapons by licensees "in every location in this state," permitting only private property owners and lessees of property the power to exclude those carrying arms. The 2014 amendments to the law at issue in this case clearly show that the legislature intended to withhold the right to exclude people carrying firearms from those who choose to lease property from a public entity. Under the 2014 amendments, a private entity that desires to exclude people carrying firearms must either buy property or lease property from a private, rather than a public, entity.

Respectfully submitted this this 22nd day of January, 2019.

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IN THE SUPREME COURT OF GEORGIA

GEORGIACARRY.ORG, INC., et.al.	)	
	)	
Appellants,	)	
	)	
v.	)	Case No. S16A0294
	)	
ATLANTA BOTANICAL GARDEN,	)	
	)	
INC.,	)	
	)	
Appellee	)	

CERTIFICATE OF SERVICE

I certify that on January 22, 2019, I served a copy of the foregoing via U.S. Mail upon:

David B. Carpenter
Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, GA 30309

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Exhibit 1

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

GEORGIACARRY.ORG, INC., TAI TOSON, EDWARD WARREN, JEFFREY HUONG, JOHN LYNCH, MICHAEL NYDEN, AND JAMES CHRENCIK,	)	
Plaintiffs	)	Civil Action File No. 2007CV138552
v.	)	
FULTON COUNTY, GEORGIA, CITY OF ATLANTA, GEORGIA, CITY OF EAST POINT, GEORGIA, CITY OF ROSWELL, GEORGIA, CITY OF SANDY SPRINGS, GEORGIA, and CITY OF UNION CITY, GEORGIA,	)	
Defendants	)	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFFS AND AGAINST THE CITY OF ATLANTA

On May 9, 2008, the Court conducted a hearing on Plaintiffs' Motion For Summary Judgment against the City of Atlanta in the above-referenced case. Having heard the argument of counsel for Plaintiffs and for the City of Atlanta, and after having considering the briefs filed with the Court in support and in opposition to the Motion, and having considered all matters filed of record, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs' Motion For Summary Judgment is GRANTED. The City of Atlanta is hereby ENJOINED from enforcing Atlanta Ordinance § 110-66 to the extent it prohibits the possession of firearms in city parks.

The Court notes that counsel for Atlanta specifically stated for the record that Atlanta had waived any issue regarding standing, and that counsel for Atlanta specifically stated that Atlanta ordinance § 110-66 had been sufficiently proved by admissions in judicio. * DCD

This 19 day of May, 2008.

Doris L. Downs
Chief Judge, Fulton Superior Court

Order prepared by:

John R. Monroe
Georgia Bar No. 516193
Attorney for Plaintiffs
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Approved regarding form:

Dennis M. Young by John Monroe with Express Permission
Sr. Assistant City Attorney
Georgia Bar No. 781744
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Atlanta, GA 30303
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* There being no just reason for delay the Court directs that this order constitute a final judgment pursuant to OCGA § 9-11-54(b).

Exhibit 2

IN THE STATE COURT OF CLAYTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,	)	CASE NO.: 2014CR06102
-VS-	)	
JEFFREY ALLEN LEISING,	)	
Defendant.	)	EXCERPTED TRANSCRIPT

***

The above-entitled matter came on for hearing before the HONORABLE JOHN C. CARBO, III, Chief Judge, State Court of Clayton County, on Wednesday, October 29, 2014, at the Harold R. Banke Justice Center, courtroom 301.

***

APPEARANCES OF COUNSEL

For the State of Georgia: Shalonda Jones-Parker
Assistant Solicitor General

For the Defendant: John R. Monroe
Attorney at Law

TRANSCRIPT OF PROCEEDINGS

EXCERPT

WEDNESDAY - OCTOBER 29, 2014

(Thereupon, the jury trial proceeded to the point at which the defense moved for a directed verdict, and the following transpired.)

THE COURT: All right, Mr. Monroe, you may proceed.

MR. MONROE: Thank you, Your Honor. We'd move for a directed verdict on all counts.

As to Count 1, the State has failed to introduce any evidence that the building in question, the Exhibit Hall, was a government entity -- or, I'm sorry, was a government building. In order to do so the State would have had to prove that there was a government entity either housed in the building or met there in its official capacity.

The only witness to talk about the building in any significant way was Marsha Thomas, and she testified she didn't have an office there, and she testified that it was just a wide-open building. There's an exhibit in evidence that just shows it's just an open building.

There's no evidence anyone has any offices there, that the State transacts any business there. In fact, no discussion at all was made of any meetings or anything being housed there. It doesn't qualify as a government

building. So, therefore, the State has failed to prove a necessary element of Count Number 1; that is, that it was a government building.

Because of that, Count number 2 would also fail because the criminal purpose that was alleged in Count 2 was that the weapon was carried in an unauthorized location. Because it wasn't a government building, or the State failed to prove that it was a government building, it also -- that would also fail the criminal trespass, Count Number 2.

In addition, in order for it to have been a weapon carried in a government building, the State would have had to prove that it was a weapon under 16-11-125.1, which defines a weapon as a knife or a handgun. There wasn't talk of a knife. So, presumably, we're talking about a handgun. But in order to qualify for a handgun, the State would have to prove that the firearm in question had a barrel length not to exceed 12 inches and that it doesn't discharge a single shot of .46 centimeters or less. The State failed to do that. Those definitions are all in 16-11-125.1.

And finally, in order for it to qualify as a government building, because Mr. Leising had a weapons carry license, he was authorized by 16-11-127(c) to carry a weapon in any location in the state, and he is also

authorized to carry a weapon in a government building unless the building is restricted or screened by security personnel and he was told upon -- and he did not leave upon being notified that he did not clear security.

The officers testified that they didn't do any kind of screening designed to detect weapons. They didn't do any metal detection. They didn't do any searches of bags or pat-downs of persons. So there was no security screening that qualified under 16-11-127 as security screening that's required in order for a weapons carry licensure -- licensee to be prohibited from a government building.

And finally, he was not told that he did not clear security, and a weapons carry licensee may not be charged under 16-11-127 if he's not told that he failed to clear security and doesn't leave. Because those things didn't happen, did not happen, neither Count 1, nor Count 2 can be sustained. There's no evidence to support them.

In addition, for Count Number 2, because the State did introduce evidence that the building in question was owned by the Department of Agriculture, it's not private property.

The legislature changed the law in 16-11-127(c) to say that a person with a weapons carry license can carry a weapon anywhere in the state except the persons in control

of private property -- and the word private was just inserted, so it obviously was intended to exclude public property -- private property, but only to the extent that they're allowed to exclude people -- I'm sorry -- exclude or reject people under the trespass law 16-11-127 -- I'm sorry -- 16-7-21(b)(3).

But the accusation charges 16-7-21(b)(1), which is remaining -- I'm sorry -- which is entering for an unlawful purpose. And the only permitted trespass charge would be 16-7-21(b)(3), remaining after being told to leave.

There was no evidence that he was told to leave. In fact, the person in charge of the show, the GunRunners Show, there were no representatives even called to testify here today to say that they asked him to leave or that he didn't have authority to enter in the first place.

So the State also fails to prove that he was without authority to enter because the State introduced evidence that the GunRunners Show was in charge of property that day. So Mr. Leising can't be found guilty of Count 1 and he can't be found guilty of Count 2.

Finally, with Count 3, the State really failed to introduce any evidence of some substantial, unjustifiable risk. All they did was enter this evidence that he was carrying a gun, which he was licensed to do. Surely

something that the State has licensed him to do cannot be, in and of itself, unjustifiably risky.

There's no allegation that he did anything in particular with the firearm other than have it. It's not a matter of, well, he was licensed to drive and then drove recklessly, so if he carried a gun and then used it recklessly. There's nothing like that. The gun didn't go off. He didn't take it out and wave it around. He didn't handle it at all. The only person who handled it was Major Matson.

But nothing in particular was done with the gun that created any kind of risk at all any more than any of the other officers who were there with weapons did with their guns, and surely they didn't create some kind of unjustifiable risk.

THE COURT: It's true that under Georgia law, is it not, Mr. Monroe, that a person who is -- let's take a licensed person who has a pistol-toting permit, that they can carry a weapon in many locations that may be crowded, populated, elbow-to-elbow people even. That's perfectly legal; is it not?

MR. MONROE: Absolutely they can carry a firearm on a MARTA train that's standing-room-only, you know, packed in like sardines, and that's perfectly legal.

THE COURT: Okay. Anything else?

MR. MONROE: Well, the State also put in the accusation that he carried the -- well, it said he carried a loaded and concealed firearm. There is no crime of carrying a concealed weapon anymore in Georgia. That was repealed four years ago. So there's not really any significance to it being concealed.

For that matter, there's no significance to it being loaded. If you look at all the statutes regulating carrying guns, they're indifferent to whether guns are loaded or not. Carrying a gun is either a crime or not a crime because it's carrying a gun, not because it's loaded or unloaded.

But anyway, the State also put into the accusation that he received lawful commands not to do so. I would submit that that's just plain not true. There's no evidence that he received any commands at all, let alone that such commands were lawful. And because it was a public building and because he had a license, he couldn't have been given a lawful command not to carry a gun there because he was perfectly entitled to carry a gun there. He had a license to do so. That's all, Your Honor.

THE COURT: All right, thank you.

Ms. Jones-Parker.

MS. JONES-PARKER: Your Honor, a directed verdict will only lie when there is no evidence to support a

contrary verdict.

As to Count 1, the State did present evidence that the defendant carried a weapon into a government building at the Atlanta Farmer's Market owned by the Georgia Department of Agriculture. The witness, Ms. Thomas, has testified --

THE COURT: I think Mr. Monroe concedes there is evidence that was established to be a governmental building.

You agree? You conceded that part, at least in your motion, there is some evidence?

MR. MONROE: Your Honor, the defense will stipulate that it was a government-owned building.

THE COURT: All right. Thank you. All right. So I don't think that's the point. I think his point is (e)(1) of the statute, subsection (e)(1).

MS. JONES-PARKER: Okay. Then, I'm sorry, I guess I missed the crux of his argument.

THE COURT: I didn't misstate that, did I, Mr. Monroe?

MS. JONES-PARKER: It's probably just me misunderstanding.

THE COURT: Your argument was basically, pretermitting whether or not it's a governmental building, (e)(1) says a licensed carrier can carry in a governmental

building with these somewhat limited exceptions?

MR. MONROE: That was one of our arguments, Your Honor. But we also dispute that the State introduced evidence that it was a government building.

THE COURT: Let's assume that it was. You stipulated it was, but --

MR. MONROE: No, we stipulated that it's government-owned.

THE COURT: Okay, government-owned. Whether or not it's occupied or houses a governmental --

MR. MONROE: State introduced no evidence it housed a government entity or that a government entity meets there in its official capacity.

THE COURT: All right, that's fine.

All right, I'm sorry. Go ahead, Ms. Jones-Parker. I didn't mean to cut you off. I slightly misunderstood that part of his argument, but I got the (e)(1) part of his argument, which I think really is the crux of this issue.

MS. JONES-PARKER: Well, you know, as to the (e)(1) exception, it states a licensed holder who enters or attempts to enter a government building carrying a weapon where ingress is restricted and screened by security personnel shall be guilty of a misdemeanor if at least one member of the security personnel is a certified peace officer. I believe there was testimony that this

particular building was being screened by certified police officers.

THE COURT: Okay. But what -- let's assume for a second that it was. You know, screened might mean what we have here at the courthouse.

MS. JONES-PARKER: Right.

THE COURT: And it might mean officers standing there saying, hey, you got a gun on you, if so you've got to take it out.

So suppose it was screened by a law enforcement officer and it does fit that part of (e)(1). What, then, can a law enforcement officer do if he finds someone in possession of a firearm, a handgun?

MS. JONES-PARKER: Well, Your Honor, I'm sorry, this statute was recently amended in July, and certainly I prepared this case under the other statute that was in existence at the time the defendant was arrested.

But what I'm seeing, it says that he can arrest the defendant and he shall be guilty of a misdemeanor. So I'm not really absolutely sure what --

THE COURT: Read the "provided however" after Title 35. It says at Chapter 8 of Title 35 provided however.

MS. JONES-PARKER: So, I believe the evidence shows that, you know, Mr. Leising did not immediately exit the building or leave the location upon notification of his

failure to clear the security. In fact, he never notified security that he had a firearm at all.

So, I mean based on my very limited understanding of this new part of the statute, I would just have to submit that we presented evidence that the defendant entered into a government building; and, although he is a licensed holder, he did not notify the certified law enforcement officers who were acting as security and screening of individuals that he had a firearm; and for that reason he's guilty of carrying a weapon in an unauthorized location. Or, at least we have provided a prima facie case that he's guilty of that offense, as to Count 1.

THE COURT: All right, very well. Any other argument?

MS. JONES-PARKER: As to Count 2, Your Honor, we have presented evidence. Mr. Monroe points to subsection (c) of the paragraph. In the middle it starts with "however, that private property owners or persons in legal control of private property through a lease, rental agreement, et cetera, et cetera, shall have the right to exclude or eject a person who is in possession of a weapon, a long gun, on their private property in accordance with paragraph (3) of subsection (b)," which is the criminal trespass statute.

THE COURT: Is this private property?

MS. JONES-PARKER: I'm sorry, Your Honor?

THE COURT: Is this private property?

MS. JONES-PARKER: Your Honor, the State's position is that we have presented evidence, a prima facie case, this was a government building. However, if the evidence is insufficient on that, we have presented evidence that this Exhibit Hall was leased by a private entity, which is the GunRunner Show, and the GunRunner Show put up signs and notice and also had law enforcement officers, security officers, telling individuals that they did not want firearms brought into the location. And this defendant did that in spite of what they chose to do.

But the crux of what I'm really trying to get to is that, from my reading of this statute, it does not limit us to charge him with criminal trespass under (b)(3). I don't see where it limits that. We can charge him with criminal trespass however we choose, and --

THE COURT: I agree. I agree with you that if you have sufficiently alleged an illegal act -- let me rephrase. I believe that you can have a criminal trespass, you're not limited to the types of criminal trespass. I disagree with Mr. Monroe's argument about that. I think that if it is illegal to enter that building with a firearm, that one can be charged with criminal trespass by entering those premises for an

unlawful purpose. I agree with that. So I don't believe he's limited to that particular type of criminal trespass. My question, though, is have you proved that.

MS. JONES-PARKER: Your Honor, I think that we have presented evidence of that.

THE COURT: Or a prima facie case of that. Let me rephrase that.

MS. JONES-PARKER: Well, because this goes to my alternative argument, that if this is not a government building, as indicated under the statute in subsection (b), then it's still an unauthorized location because the private property owners, who were the Gunrunners Show, had indicated they did not want anyone to enter into the property with a loaded firearm, and when this defendant did do that, he entered onto an unauthorized location, and as a result he still violated the criminal trespass law because he did this knowingly and he did it without authority. That evidence definitely came in, that he had no authority to enter onto the premises of Atlanta Farmer's Market for an unlawful purpose.

MR. MONROE: Your Honor, there is no --

THE COURT: I'll give you a chance to respond in a moment.

Anything else you want to argue, Ms. Jones-Parker?

MS. JONES-PARKER: As to Count 3, the reckless

conduct, Your Honor, I will concede that most of the evidence that I presented that has come out from the officers go to the reckless conduct count. I think that the State has definitely presented a prima facie case on the reckless conduct.

THE COURT: Can the mere carrying of a loaded firearm somewhere in the state of Georgia be considered reckless conduct?

MS. JONES-PARKER: Not just somewhere in Georgia but where there is the selling and exchange of firearms, and where the owners have told you not to do that, not to bring it onto the property.

THE COURT: Why does that make it reckless conduct?

MS. JONES-PARKER: As the evidence that came out, Your Honor, from numerous witnesses, Officer Waltrip indicated that there could be accidental discharge. They wanted to deter accidental discharge.

THE COURT: Can't there be an accidental discharge any time? I suppose it's always possible that a weapon could accidentally discharge. But isn't it true that there are many locations in the state of Georgia where a licensed firearm carrier can carry, legally carry a weapon in close proximity to many people, close quarters to many people, and why would that not be reckless conduct but this could be?

MS. JONES-PARKER: I think that the basic difference between carrying this gun on a crowded MARTA train versus bringing it into a gun show, a loaded firearm into a gun show, will basically boil down -- and I believe that's where he alluded to in his argument -- basically, Your Honor, it boils down to the fact that he was told not to do that, and he received --

THE COURT: Well, that might make it carrying a weapon in an unauthorized location. I agree with that.

MS. JONES-PARKER: Yes, Your Honor.

THE COURT: Does it make it reckless conduct though? Just because somebody says you can't, does that make it any more reckless than if it's a place where you can?

MS. JONES-PARKER: I think, Your Honor, the fact that this defendant knew and intentionally decided to go into this gun show, where there is the exchange of firearms and the buying and selling of firearms, knowing that this behavior was not wanted on those premises. I would just rest on the evidence that was presented, that it was reckless in nature.

THE COURT: Let me rule what I'm going to rule at this point. If you wish to address anything else, Mr. Monroe, I'll allow you to close.

First of all on the reckless conduct, I grant the motion for directed verdict. I do not believe that the

mere carrying of a loaded firearm, in and of itself, can be construed as reckless under any circumstances absent some act committed by the person carrying the loaded firearm that somehow elevates the carrying of the loaded firearm to be reckless: waving it around, discharging it into the air, you know, pointing it at exit signs, something like that. That might be reckless conduct.

The mere carrying of a weapon in a facility, in and of itself, I believe, under Georgia law, cannot be considered reckless conduct because that conduct is lawful in the overwhelming majority of locations in the state of Georgia with the exception of the few listed in this statute. And if this carrying of the weapon violates some provision of this statute, then it violates some provision of this statute. But it doesn't make it reckless.

Reckless is causing an unjustifiable risk to the safety of persons or property. And the mere carrying of a firearm, under Georgia law I believe, as I read it, would never be considered, in and of itself, reckless. So I'm going to grant a directed verdict as to Count 3.

As to Count 1, I'm going to find that there is some evidence, at least, that this building is owned by the Department of Agriculture. Now let's assume, for the sake of argument for a brief moment, that there is evidence making it a governmental building, or government building,

a government building as defined as -- under 16-11(a)(2)(A), a building in which a government entity is housed, whatever that means. I'm not sure what that means. But let's assume for a second it is that, just for the sake of argument. If it is a government building under that definition, then you have to go to (e)(1), a license holder, which the undisputed evidence is that Mr. Leising is a license holder. The evidence of the license has been put into evidence. Major Matson testified he actually saw the license that day.

A license holder shall be authorized to carry a weapon in a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel. All right.

Let's assume for a moment that there is evidence that it was screened by security personnel. There is testimony that officers were, while there were no metal detectors or any sort of screening equipment there, officers were standing there asking people if they had a loaded firearm on them. There's no direct evidence that anyone asked Mr. Leising of that, but there were officers standing there and screening people. Let's take that, if we want to call that screening. There were officers asking.

So a license holder who enters or attempts to enter a

government building carrying a weapon where ingress is restricted or screened by security personnel shall be guilty of a misdemeanor if at least one member of the security personnel is certified as a peace officer.

Well, there's certainly evidence that all of these three officers were certified as peace officers.

Provided, however, that a license holder who immediately exits such building or immediately leaves such location upon notification of his or her failing to clear security due to the carrying of a weapon shall not be guilty of violating this subsection or paragraph (1) of subsection (b) of this Code Section.

So it seems to me that the only way that a licensed weapon holder can be found guilty under (b)(1) of this subsection, which is what he's accused of in Count 1 of this accusation, carrying a weapon in a government building, it has to be screened. And let's assume that this one was. He has to be notified that you've not cleared screening. And you have to fail to leave the building.

If upon -- for example, if you walked into this courthouse, although courthouse is listed as a courthouse, but let's suppose it was across town, the building where the business licenses and all that is housed in the Clayton County building, the old courthouse. And a person

walks in there and goes through a screening device and they say wait a minute, sir, you've got a gun. He says I've got a license. They say, okay, take your gun back to your car and come back. Under this Code Section, unless he refuses to do that, he's not guilty of any offense. He can go in, put his gun on a metal detector, show the gun, and if he has a license, basically under 16-11-127(e)(1), has to be allowed to basically leave with the weapon before he is arrested.

Shall not be guilty of violating -- and in this case the evidence is undisputed that he was never told to leave the building. There's no evidence he was ever told to leave the building with a firearm. That he simply left. In fact, it wasn't even determined he had the weapon until after he left the building. So he could not have violated, pursuant to (e)(1), could not have violated that and, as incorporated into (e)(1), could not have violated (b)(1).

So pretermitting whether or not this was a governmental building, whether or not this was adequate screening, I find that under (e)(1), as it's specifically defined, he cannot be found guilty of that.

Although (e)(1) was not in effect at the time this offense alleged to have occurred, the net effect of (e)(1) is decriminalizing conduct that might otherwise have been

criminalized under the existing law, and once the legislature decriminalizes acts that were previously criminalized, a person cannot be prosecuted for acts that may have been criminalized at the time but has subsequently been decriminalized. And that is the net effect of (e)(1), as it broadens the definitions of when a person can freely carry a weapon with a permit without risking arrest.

So based on that I'm going to grant the motion for directed verdict on Count 1.

That leaves us with Count 2. Count 2, of all the demurrers that were filed, one wasn't filed on this point in Count 2, because it says did enter the Atlanta Farmer's Market for an unlawful purpose, specifically to carry a weapon in an unauthorized location.

Well, you can carry a weapon in an unauthorized location in several ways, one of which is a government building. I've thrown that one out.

The other possibility, it seems to me, and has been argued by the State, would be as defined under subsection (c). Let's read subsection (c). A license holder, Mr. Leising, shall be authorized to carry a weapon as provided in every location in the state not listed in subsection (b), which are courthouses, government buildings, jails, place of worships, mental health facility, nuclear power

facility, polling place.

A license holder shall be authorized to carry a weapon in every location not listed in that subsection or prohibited in subsection (e). I've already ruled that didn't happen.

However, private property owners or persons in legal control of private property through a lease, rental agreement, et cetera, shall have the right to exclude or eject a person who is in possession of a weapon or a long gun on their private property. Okay.

So is there any evidence that the person who put up the sign was a, quote, one, a private property owner? Again, the unrebutted evidence in this court today is that this building was owned by the Department of Agriculture. So, by definition, it was not a private property owner.

Where a person in legal control of private property through a lease, rental agreement, license, contract, et cetera. Again, the unrebutted evidence in this case, the only evidence in this case is this was not private property, it was publicly owned property.

MS. JONES-PARKER: Your Honor, if I may?

THE COURT: Yes.

MS. JONES-PARKER: And I apologize, but I believe that Ms. Thomas did testify that the premises were leased to GunRunner Shows for that time period.

THE COURT: I agree. But under the evidence it might be public property leased to a private entity. Unfortunately, though, this statute does not prohibit that, and criminal statutes must be strictly construed to their most narrow application. This says private property leased to a private group. It does not apply in any way that I see to publicly owned property leased to a private group under subsection (c).

The statute may need to be amended, but that's an issue for the legislature because it does not say anything about public property leased to a private corporation or to a private entity. It says a private property owner or a person in legal control of private property through a lease, rental agreement, licensing agreement, contract, et cetera. But again, the unrebutted evidence is that this is publicly owned property, not private property.

I'll give you a chance to comment on that if you'd like, Ms. Jones-Parker, but that's the way I read it.

MS. JONES-PARKER: Your Honor, I just wanted to state this for the record from the State's perspective. In the event that these proceedings are utilized in subsequent proceedings outside of this court, that private was injected into the statute that was amended on July 1st, 2014, and at the time that this incident happened --

THE COURT: I agree with that.

MS. JONES-PARKER: -- that was not in there.

THE COURT: I agree with that. That's correct. But again, what the legislature has in essence done is broadened, by restricting where you can restrict them, they have, in essence, broadened and decriminalized activity that may have been criminalized under the previous statute.

MS. JONES-PARKER: That's right, Your Honor. So I just want to make the record clear that at the time this happened the law was different, which is why he was charged the way he was charged.

THE COURT: It may well be. Certainly it may well have been, and I believe it was different. But again, we are, once the legislature changes it and in effect decriminalizes conduct that was previously criminalized, the person can no longer be prosecuted for the prior prohibited conduct.

Based on that, I believe I have no choice but to grant the motion for directed verdict on Count 2 as well. So that will grant the directed verdict on Counts 1, 2, and 3.

I'm going to bring the jury back in, explain that to them. Then we'll be in adjournment.

Deputy, would you ask Mr. Hawkins to bring the jury back in?

(Thereupon, the jury returned to the courtroom and the following transpired.)

THE COURT: Members of the jury, I need to explain something to you that has taken place outside of your presence. First of all, good news or bad news for your part, depending on how you might view it, you will no longer be required to consider this case, and I'm going to excuse you in just a moment. Let me explain to you what has happened outside of your presence just so you'll know.

At the close of the State's evidence the defense made a motion for directed verdict on Counts 1, 2, and 3 of this accusation. A motion for directed verdict means that the defense is saying that if you take the evidence produced by the State, construe that evidence in a light most favorable to the State, that they have not proven that these crimes have been committed. I have granted those motions for directed verdict. Let me explain why.

The basic reason is this. Effective July 1st of this year the Georgia Legislature modified the statute concerning where licensed gun permit carriers can carry weapons. The unrebutted evidence is that Mr. Leising is a licensed gun carry permit holder. And, in essence, what they did is they decriminalized conduct that under the law prior to July 1st had been illegal, in carrying weapons in certain locations, et cetera, and they made very, very

limited restrictions as to where a license -- Basically a license carry permit can carry a weapon basically anywhere with certain limited restrictions, and even in those places certain things have to happen before the person can be arrested. That didn't occur in this case.

Now, while this conduct may or may not have been illegal under the previous law, once -- and, of course, this is alleged to have occurred back last October. But even though the laws in one state, then under the law, once the legislature, in effect, decriminalizes conduct that had previously been criminalized, you cannot go back and prosecute someone under the old law once the new law would say that conduct that may have been prohibited under the old law is now not prohibited under the new law. So the new law is what binds me at this point and would have bound you had the case gone to the jury.

Again, under the law, a person can carry, with a permit, a firearm basically in any governmental building, not a courthouse, but a governmental building, such as a Department of Agriculture building, unless you're being screened by law enforcement. And there was some evidence that that may have been happening here, at least verbally screening. There was no evidence that Mr. Leising himself had been screened.

And, number two, even if it is screened and a weapon

is discovered, the person must be given the opportunity to leave the premises with the weapon, and only if they refuse to leave the premises with the weapon can they be arrested. So that's not what happened here. In fact, as you know from the evidence, he wasn't even found to have a weapon until after he had left the premises.

So in this case I found that I had no choice but to grant the directed verdict as to Counts 1, 2, and 3, directed verdicts of not guilty, which means you no longer have any obligations in this case.

I want to thank you very much for your patience. A couple of things. Once you file out, I'll excuse you in just a moment, you'll be free to discuss the case with anyone you choose to discuss it with. However, if someone approaches you to discuss it and you choose not to discuss it, let them know that. I'm sure they'll respect your wishes.

As you file out, Mr. Hawkins will collect your badges and your notepads. He will escort you back down to the jury assembly room on the first floor. The clerk there will have some further instructions for you concerning the need or the lack of need for your jury service for the remainder of the week.

I'm not sure -- I've still got some cases reporting in the morning. I'm not sure whether you're going to be

needed on those or not. I don't know if any of the other judges still have cases reporting. But again, if I don't see you again, thank you very much for your jury service this week.

(Thereupon, the trial was concluded at 4:44 p.m.)

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C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF CLAYTON

I, Kim H. Raines, do hereby certify that the above and foregoing Transcript of Proceedings, Excerpted Transcript, was taken down by me on October 29, 2014, and that the same is a true, correct, and complete transcript of said proceedings.

I further certify that I am neither kin nor counsel to the parties herein, nor have any interest in the caused named herein.

This the _____ day of _____, 2014.

_____
KIM H. RAINES, CCR-CVR
Certified Court Reporter
Certificate Number B-1631