IN THE COURT OF APPEALS

STATE OF GEORGIA

GEORGIACARRY.ORG, INC. and EDWARD A. STONE,

Appellant

v.

COWETA COUNTY, GEORGIA,

Appellee

Case No. A07A2036

BRIEF OF APPELLEE

Appeal From the Superior Court of Coweta County, Georgia,
Civil Action File No. 07-V-215

Submitted by:

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IN THE COURT OF APPEALS OF GEORGIA

STATE OF GEORGIA

GEORGIACARRY.ORG, INC. and EDWARD A. STONE,	:	
Appellants,	:	
vs.	:	Appeal No. A07A2036
COWETA COUNTY, GEORGIA,	:	
Appellee.	:	

BRIEF OF APPELLEE

COMES NOW Appellee Coweta County, Georgia ("Coweta County") and files this its response to Appellants GeorgiaCarry.Org, Inc. and Edward A. Stone's ("Appellants") Appellate Brief, respectfully showing this Honorable Court as follows:

INTRODUCTION

Coweta County ordinance 46-33 (the "Ordinance") prohibits certain activities on its recreation grounds and facilities. Examples of prohibited conduct are: the use of alcoholic beverages, littering, gambling, fighting, using profanity and the bringing of firearms and such similar weapons onto the recreational

property. Appellants contend that persons should be allowed to carry firearms onto Coweta County's recreational properties and that the Ordinance is preempted by State law. Appellants' argument fails because a county ordinance that regulates an area of law that is also regulated by general State law is not preempted if it is (1) authorized by general laws; and (2) does not conflict with general law. General law gives Coweta County the police power necessary to protect the public health, safety and general welfare of its citizens. Restricting the carrying of firearms on county-owned recreational property does not conflict with any general state law. The Ordinance is, therefore, a proper exercise of Coweta County's police power.

STATEMENT OF FACTS

The only issue before this Court is whether section (c) of the Ordinance is a valid exercise of Coweta County's police powers. The Ordinance seeks to prohibit certain activities on Coweta County's recreational facilities including, but not limited to: (1) possession of alcoholic beverages; (2) littering; (3) fighting; (4) using profanity by players, coaches or spectators; and (5) the bringing of firearms and such similar weapons onto the County's recreational property. Section (c) of the Ordinance specifically states "firearms, air (or spring loaded) rifles/pistols, fireworks, and any device firing or propelling a projectile are strictly prohibited [on

County recreational properties and facilities]." (Coweta County Ordinance 46-33(c)(a certified copy of the Ordinance may be found in the record at R 142-144)). Section (c) of the Ordinance is the only fact pertinent to this Court's decision of the relief sought by Plaintiffs.

STANDARD OF REVIEW

The appellate court reviews orders granting summary judgment de novo. Rubin v. Vello Corp., 235 Ga. App. 250, 510 S.E.2d 541 (1998). On appeal of a grant of summary judgment, the appellate court must determine whether the trial court erred in concluding that no genuine issue of material fact remains and that the party was entitled to judgment as a matter of law. Moore v. Food Assocs., 210 Ga. App. 780 (1993).

ARGUMENT AND CITATION OF AUTHORITY

I. The Ordinance is not Preempted if it is Authorized by General Laws and does not Conflict with Them.

The doctrine of preemption is based on the idea that Congress, by enacting legislation, may control the laws of a state. Sturm, Ruger & Company, Inc. v. City of Atlanta, 253 Ga. App. 713, 717-718 (2002). There are three ways in which Congress may preempt state law: expressly defining the area of preemption,

extensively regulating an area so that preemption may be inferred, or enacting a law that directly conflicts with state law. Id. State law may preempt local law in the same way, either expressly, by implication, or by conflict. Id. Preemption, effectively, precludes all local or special laws on the same subjects as State laws. Id. (citing Ga. Const. 1983, Art. II, Sec. VI, Par. IV (a); Franklin County v. Fieldale Farms Corp., 270 Ga. 272 (1998).

If no local law could ever be enacted on the same subject as State law, then there would be little to no need for local legislation. This thankfully is not the case. The Georgia Constitution, through the "Uniformity Clause," creates a rather broad exception to the preemption doctrine. The Uniformity Clause reads as follows:

> Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, **except that the General Assembly may by general law authorize local governments by local ordinance or resolution to**

exercise police powers which do not conflict with general laws.

Ga. Const. 1983, Art. III, Sec. VI, Par. IV (a); see also Franklin County, supra; Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19 (2005)(emphasis supplied). Prior to the 1983 Amendment to the Georgia Constitution, the Uniformity Clause did not contain the phrase in bold print above; it read only: "Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law." Franklin County, at 274-275. Because of the language, the State recognized the possible confusion over whether local governments would have the power to create laws on any matter or just matters of concern to both state and local governments. Id.

The Georgia Legislative Oversight Committee ultimately approved a proposal to revise the Uniformity Clause to add the clause in bold print above to permit local governments to "have concurrent jurisdiction with the state to exercise certain **police powers** in **areas of concern to both**," and the voters of this State ratified that amendment. Id. (emphasis supplied). The effect of this allows the

enactment of local laws that are permitted by, and do not conflict with general laws. Pawnmart, Inc., 279 Ga. 19 (emphasis supplied). Stated another way, "[t]he first part [of the Uniformity Clause] provides the rule that general laws preempt local or special laws on the same subject; the second part [of the Uniformity Clause] **excepts from this rule local laws permitted by, and not conflicting with, the general law**." Pawnmart, Inc, 279 Ga. 19 (emphasis supplied).

Accordingly, if an ordinance also regulates an area that is regulated by general law, that area of the law "is preempted **unless** it is (1) authorized by general laws and (2) does not conflict with them." Id. at 20. "A special law does not conflict with a general law if it 'does not detract from or hinder the operation of the [general] law, but rather it augments and strengthens it.'" Grovenstien v. Effingham County, 262 Ga. 45, 47 (1992) (citing City of Atlanta v. Associated Builders and Contractors of Ga., 240 Ga. 655, 657 (1978); see also Watson v. Ellis, 261 Ga. 434 (1991), Franklin County, 270 Ga. at 275.

"The courts cannot strike down legislation, whether state or [county], unless it plainly and palpably violates some provision of the federal or state constitution, or... unless enacted without power of the [county] to pass them, or in

contravention of state statutes or public policy." City of Atlanta v. Associated Builders and Contractors of Georgia, Inc., 240 Ga. at 657.

Therefore, the Ordinance is not preempted if it passes the two-part test that it (1) is authorized by general laws, and (2) does not conflict with them. Coweta County respectfully submits that the Ordinance satisfies both prongs of this two-part test (as will be clearly set forth below).

A. The Ordinance is Authorized by General Law.

"General law gives counties the police power necessary to protect the public health, safety, and general welfare." Pawnmart, Inc., 279 Ga. at 20 (citing Board of Commissioners v. Guthrie, 273 Ga. 1, 3 (2000)). Prohibiting firearms and other such weapons on County-owned recreation properties and facilities is clearly a proper exercise of the County's police power to protect the safety and welfare of the public. Though Appellants would have the Court believe that the public would be more safe if the County's walking trails, little league fields, gymnasiums, 4-H parks, agricultural exposition center and senior citizens' center were full of people carrying pistols, Coweta County respectfully submits that prohibiting firearms and such other weapons will most assuredly make for a more safe environment. Accordingly, the Ordinance is a proper use of the County's police power. Next, it

must be determined if the Ordinance conflicts with the applicable Georgia law relative to carrying firearms on publicly owned places; if it does not, the Ordinance is not preempted.

B. The Ordinance does not Conflict with State Law Relative to Carrying Firearms and Other Weapons on Publicly Owned Premises.

Plaintiffs mistakenly rely on O.C.G.A. § 16-11-173 for their argument that the Ordinance is preempted. O.C.G.A. § 16-11-173 is contained in Part 5 of Article 4 of the very same title and Chapter which deals with the regulation of the transfer and purchase of firearms and is even entitled "Transfer and Purchase of Firearms." This is important because there is statute specifically addressing the carrying and possession of firearms. That statue is O.C.G.A. § 16-11-27 and is found in Part 3 of Article 4 is the section of the Code that deals with the carrying of firearms and is appropriately entitled "Carrying and Possession of Firearms."

Appellants heavily base their argument on the title of code section 16-11-173 and incorrectly argue that Coweta County does the same. This is incorrect, as Coweta County bases its arguments on the **substance** of the statutes at issue, not the titles. Coweta County simply pointed out the titles of the code sections and

how they were consistent with the substance of the statutes and the cases addressing those statutes. Specifically, Appellants insist that O.C.G.A. §16-11-173, listed in Part 5 of Article 3, is not titled "Transfer and Purchase of Firearms," but rather "Brady Law Regulations." Coweta County respectfully shows the Court that the Thomson-West publishing company/Westlaw and the Lexis Nexis publishing company differ in their title headings. The undersigned subscribes (though possibly not for long) to Thomson-West/West Law and attaches for demonstrative purposes only, and not for this Court's consideration as part of the appellate record, the page from the Thomson-West code book and web page citation showing the title of O.C.G.A. §16-11-173 as "Transfer and Purchase of Firearms." Regardless, whatever the title is to O.C.G.A. §16-11-173 does not control this Court's analysis. What matters is the substance of the statute and whether the Ordinance conflicts with the statute.

Moreover, the case relied upon by Appellants, Sturm, Ruger & Company, Inc., involves the City of Atlanta attempting to usurp the State's regulation over the manufacture, sale, distribution and promotion of firearms, which had been preempted by O.C.G.A. § 16-11-173. The Sturm, Ruger & Company, Inc. case in no way involves the issue of carrying of firearms in public places. In the instant

case, Coweta County is not attempting to usurp any such power of the State relative to carrying firearms or other weapons, but rather is seeking to strengthen the State's regulation of carrying firearms and other weapons in publicly owned places, as will be set forth below.

Because the Ordinance involves the regulation of the carrying of firearms in public places, the proper statute for the Court to consider in its preemption analysis is O.C.G.A. §16-11-127 which specifically addresses the carrying and possession of firearms. Pursuant to O.C.G.A. §16-11-127, "a person is guilty of a misdemeanor when he or she carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense." O.C.G.A. §16-11-127(a). "For the purpose of this code section, 'public gathering' shall include, but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publically owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises." Id.

The Ordinance **in no way** conflicts with O.C.G.A. §16-11-127, as they both seek to regulate the carrying of firearms in publicly owned places. As set forth above, an ordinance is not preempted if it is (1) authorized by general laws, and (2)

does not conflict with them. Pawnmart, Inc, 279 Ga. at 20 (citing Board of Commissioners v. Guthrie, 273 Ga. 1, 3 (2000). Coweta County established above that general law gives it the police power necessary to adopt the Ordinance to promote the health, safety and general welfare of the public. Coweta County has now established the second prong of the two-part test by showing that the Ordinance does not conflict with general law. Thus, the Ordinance is a proper use of the County's police power and should be found valid and enforceable by the Court. Indeed, one may not deny the numerous incidents of violence by parents and spectators at youth sporting events. Certainly, the Ordinance is a reasonable exercise of power in order to help curtail deadly violence on its recreation facilities.

Furthermore, as set forth above, a "special law does not conflict with a general law if it 'does not detract from or hinder the operation of the [general] law, but rather it augments and strengthens it.'" Grovenstien, 262 Ga. 45, 47 (1992) (citing City of Atlanta v. Associated Builders and Contractors of Ga., 240 Ga. 655, 657 (1978); see also Watson, 261 Ga. 434 (1991), Franklin County, 270 Ga. at 275. Clearly, the Ordinance only serves to strengthen and augment O.C.G.A. §16-

11-127, as both serve the purpose of prohibiting the carrying of firearms on publicly owned premises. Thus, the Ordinance should be found to be a valid.

Appellants incorrectly assert that O.C.G.A. §16-11-127 is inapposite to the case at bar. Appellants claim that not all public places are considered public gatherings, and therefore O.C.G.A. §16-11-127 does not control this case. Appellants rely exclusively on State v. Burns, 200 Ga. App. 16 (1991) for this assertion. The State v. Burns case actually supports Coweta County's argument to this Court. In that case, the Court of Appeals found that the state was precluded from prosecuting a person for the carrying of firearms in a McDonald's parking lot because the Court found that a parking lot was not a "public gathering place." The Ordinance seeks to regulate the carrying of weapons on its recreational facilities. Recreational facilities are created with the specific purpose of being public gathering places for the community. In fact, Appellants in their brief to this Court, admit that O.C.G.A. §16-11-127 includes places where people will be gathered and not simply events. O.C.G.A. §16-11-127 applies to County owned recreational facilities and is, therefore, the controlling statute for this Court's preemption analysis.

As set forth above, an ordinance is not preempted if it is (1) authorized by general laws, and (2) does not conflict with them. Pawnmart, Inc, 279 Ga. at 20 (citing Board of Commissioners v. Guthrie, 273 Ga. 1, 3 (2000)). Coweta County established above that general law gives it the police power necessary to adopt the Ordinance to promote the health, safety and general welfare of the public. Coweta County has now established the second prong of the two-part test by showing that the Ordinance does not conflict with general law. Thus, the Ordinance is a proper use of the County's police power and should be found valid and enforceable by the Court.

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II. Similar Preemption Analyses by the Georgia Supreme Court

The Supreme Court of Georgia has performed similar preemption analyses much like the analysis to be made by this Court relative to the Ordinance. In Pawnmart, Inc., the plaintiff challenged a Gwinnett County ordinance which requires pawn brokers to maintain certain records and obtain certain information from persons pawning property, including finger prints, digital photographs and sales receipts for new merchandise. 279 Ga. at 19. The ordinance in question was intended to impede the sale of stolen property. The plaintiffs maintained that the Gwinnett County ordinance in question was preempted because it conflicted with O.C.G.A. §§ 44-12-130-44-12-138. A purpose of these statutes was likewise to impede the sale of stolen property. The Supreme Court first looked to determine whether Gwinnett County was authorized by general laws to enact the ordinance in question. The Supreme Court found that general law gives counties the police power necessary to protect the public health, safety, and general welfare. The Supreme Court then found that the purpose of the ordinance in question was to impede the sale of stolen property, which promotes the public health, safety, and general welfare. Therefore, the Supreme Court found that the ordinance in

question was a proper use of Gwinnett County's police power and, thus, authorized by general law. Id. at 20.

Next, the Supreme Court turned to the analysis of whether the ordinance in question conflicted with general law. Because certain of the measures set forth in the ordinance in question were useful to protect the public welfare by impeding the sale of public property, the ordinance in question did not conflict with state law. Moreover, the Supreme Court found that the ordinance in question "served to strengthen [the state law's] requirements as to the records that pawn brokers must keep." The Supreme Court further held that "there is no conflict when the local law did not impair the general law's operation, but rather augmented and strengthened it." Id. at 21. Accordingly, the ordinance in question was found to be valid.

In Grovenstien, the plaintiff challenged an Effingham County ordinance which provided that any holder of a license authorizing the sale of malt beverages or wine at retail in the county could not sell beer or wine to any person under the age of 21, or otherwise they would lose the license authorizing the sale of such beverages. 262 Ga. at 45. Appellants argued that the ordinance in question was

preempted by O.C.G.A. § 3-3-23, which prohibited the sale of alcoholic beverages to any person under 21 years of age.

First, the Grovenstien Court found that O.C.G.A. § 3-3-2(a) expressly authorized by general law Effingham County to exercise by local ordinance the police power of revoking licenses for the sale of beer and wine so long as it did not conflict with general law. Id. at 47. Next, the Grovenstien Court noted that the ordinance in question does not conflict with general law if it "does not detract from or hinder the operation of the general law, but rather augments and strengthens it." Id. The Grovenstien Court then looked to purpose of the ordinance in question and found it was to prohibit the sale of alcohol to minors and did so under more specific circumstances then did O.C.G.A. § 3-3-23's general prohibition against furnishing alcoholic beverages to minors. Finding such, the Grovenstien Court held "in so doing (the ordinance in question) only augments and strengthens O.C.G.A. § 3-3-23, and does not conflict with O.C.G.A. § 3-3-23 in any manner." Id. Accordingly, the ordinance in question was held valid.

Coweta County respectfully submits that the instant case is no different than the Pawnmart, Inc. and Grovenstien cases. As with the ordinances in question in those cases, the Ordinance does not conflict with any general law, but rather only

serves to strengthen and augment the general law, specifically O.C.G.A. § 16-11-127. Accordingly, the Ordinance is valid and Plaintiff's and the ruling of the trial court should be upheld.

III. The Ordinance is not a Wholesale Ban on Carrying Firearms

It is important to recognize that Coweta County is not attempting to regulate the carrying of firearms everywhere in the County, despite what Appellants may suggest. Coweta County is only attempting to regulate the carrying of firearms on county owned recreational facilities. This is no different from prohibiting people from smoking or carrying alcoholic beverages on county owned property. Both are to protect the safety and well being of the community. Even under Appellants' analysis, Coweta County may limit the carrying of knives, explosives and other weapons for the protection of their citizens, but not the most dangerous of those weapons, a firearm. Such an interpretation of the law is not logical and cannot stand.

While Coweta County respects and applauds Appellants efforts to protect their Constitutional rights, it simply makes no sense to find that Coweta County cannot prohibit persons from bringing firearms onto County owned recreational facilities, such as little league fields, walking trails, gymnasiums, agricultural

exposition centers and senior citizens' centers. Indeed, there is not expectation that one may carry a pistol to a professional or college sporting event, why should the analysis be any different from county owned recreational facilities?

Pursuant to Article I, Section 1, Paragraph 8 of the Georgia Constitution, "the right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne." "The right to bear arms, like other rights of person and property, is to be construed in connection with the general police power of the state, and as subject to legitimate regulation thereunder. Where a state constitution in terms provides, in connection with the right to bear arms, that the state may regulate this right, or may regulate the manner of bearing arms, these words expressly recognize the police power in direct connection with the constitutional declaration as to the right." Landers v. State, 250 Ga. 501, 503 (1983). In Landers, a criminal defendant was challenging the constitutionality of O.C.G.A. § 16-11-131 (prohibiting possession of firearms by convicted felons). The Landers Court acknowledged that the General Assembly had the power to enact reasonable regulations dealing with the keeping and carrying of weapons and found that O.C.G.A. § 16-11-131

was a reasonable regulation authorized by the State's police power and thus not violative of the Georgia Constitution.

Accordingly, the General Assembly likewise had the authority to enact O.C.G.A. § 16-11-127 which prohibits the carrying of firearms at public gatherings. If the State may legally regulate the carrying of firearms on publicly-owned properties, then Coweta County may legally do the same by ordinance so long as its ordinance do not conflict with State law. As the Ordinance does not conflict with State law, it is not preempted.

CONCLUSION

For the reasons set forth above, Coweta County respectfully submits that the Ordinance is valid. Therefore, Coweta County respectfully requests that this Court uphold the decision of the trial court.

Respectfully submitted this 23rd day of July, 2006.

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