

Fall 2023 - *Criminal Law* - *THE STATE v. COOK et al.*

*Criminal Law - Statutory Construction - Statutory Interpretation*

*THE STATE v. COOK* (No. S23A0702). *THE STATE v. ROACHE* (No. S23A0703). *THE STATE v. DELA CRUZ* (No. S23A0704). *THE STATE v. JACKSON* (No. S23A0705). *THE STATE v. STROWDER* (No. S23A0706). *THE STATE v. WHITAKER* (No. S23A0707), 317 Ga. 659, 893 S.E.2d 670 (Ga.Sup.Ct. 2023)<sup>1</sup>

Decided by the GEORGIA SUPREME COURT on OCTOBER 11, 2023; RECONSIDERATION Denied NOVEMBER 7, 2023<sup>2</sup>

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<sup>1</sup> State v. Cook, 317 Ga. 659 (2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

**Judges:** Hon. BOGGS, M., Hon. PETERSON, N., Hon. WARREN, S., Hon. BETHEL, C., Hon. ELLINGTON, J., Hon. MCMILLIAN, C., Hon. LAGRUA, S., Hon. COLVIN, V., and Hon. PINSON, A.

**Opinion by** Hon. BETHEL, C.

#### KEY ISSUES PRESENTED

In *State v. Cook, et al*, the Georgia Supreme Court considered two issues. First, whether the trial court properly defined "peace officer" for purposes of O.C.G.A. § 17-7-52 and, second, whether the trial court erred by finding that the jailers in this case fall within that definition.<sup>5</sup>

#### PROCEDURAL HISTORY & POSTURE

##### *Atlanta Judicial Circuit, Fifth Judicial Administrative District, Fulton County Superior Court*

On September 11, 2018, after being arrested for trespassing,<sup>6</sup> 32-year-old Antonio May died from injuries he sustained inside the Fulton County Jail while in the custody of the Fulton County Sheriff. The defendants, Aaron Cook, Jason Roache, Guito Dela Cruz, Omar Jackson, Kenesia Strowder, and William Whitaker, were employed as jailers by the Fulton County Sheriff and were on duty at the Fulton County Jail when May died.<sup>7</sup> The State alleges through indictments of the defendants for felony murder and other crimes that the defendants beat, pepper sprayed, and repeatedly shocked May with an electronic taser, causing his death.<sup>8</sup> Claiming entitlement to the pre-indictment protections afforded to "peace officers" under O.C.G.A. § 17-7-

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<sup>5</sup> *State v. Cook*, 317 Ga. at 659.

<sup>6</sup> Fox 5 Atlanta Digital Team, *Supreme Court reverses decision to throw out charges for Fulton County jailers in inmate's death*, FOX 5 ATLANTA, Oct. 11, 2023, <https://www.fox5atlanta.com/news/supreme-court-reverses-antonio-may-fulton-county-jail-death-charges>.

<sup>7</sup> *State v. Cook*, 317 Ga. at 659.

<sup>8</sup> *Id.*

52, the defendants sought to quash their indictments on the basis that they did not receive pre-indictment notice and an opportunity to be heard.<sup>9</sup>

The trial court held an evidentiary hearing on the matter and thereafter entered an order quashing the indictments.<sup>10</sup> The trial court's analysis turned on whether the defendants were "peace officers", pursuant to O.C.G.A. § 17-7-52.<sup>11</sup> After considering definitions of "peace officer" found elsewhere in the Code, the trial court determined that O.C.G.A. § 16-1-3 (11) was "most applicable." O.C.G.A. § 16-1-3 (11) defines "peace officer" as "any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses."<sup>12</sup>

Applying that definition, the trial court found that while none of the defendants were empowered to make arrests, they were charged with maintaining the public peace.<sup>13</sup> To that end, the trial court reasoned that "within the community of over 3,000 inmates in the Fulton County Jail (which is accessible to the public in various controlled ways), detention officers are *the* maintainers of public order" in the event that "there is a fight in the mess hall over bad beans or a brawl in the common space over which channel the TV should be on."<sup>14</sup>

Following its finding that the defendants were charged with the control and supervision of inmates at the jail, the trial court determined that the defendants were "vested with a duty to maintain public order, i.e., keep the peace," as such, peace officers are entitled to the protections of O.C.G.A. § 17-7-52. On that basis, the trial court quashed the indictments.<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *State v. Cook*, 317 Ga. at 659.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

***Posture***

The State appeals. *See* O.C.G.A. § 5-7-1(a)(1) (allowing the State to appeal in criminal cases from, among other things, “an order, decision, or judgment setting aside or dismissing any indictment”).<sup>16</sup> The State argued that the trial court incorrectly applied the definition of “peace officer” under O.C.G.A. § 16-1-3(11) instead of O.C.G.A. § 35-8-2(8).<sup>17</sup> The State contended that the defendants did not qualify for pre-indictment protections as “peace officers” under the correct statutory definition.<sup>18</sup> The Supreme Court’s review of a statute’s proper construction is *de novo*.<sup>19</sup>

## SUBSTANTIVE FACTS

Arron Cook, Guito Dela Cruz, Omar Jackson, Jaso Roache, Kenesia Strowder and William Whitaker were facing murder charges for the death of Antonio May.<sup>20</sup> According to the indictment, Atlanta police arrested the 32-year-old Macon resident on Sept. 11, 2018, on a charge of misdemeanor trespassing. First, officers took May to Grady Memorial Hospital where he was medically cleared, then to the jail.<sup>21</sup> A Fulton County Medical Examiner’s report stated a guard noticed that Mr. May was naked and masturbating in his cell and asked him to stop, but he refused.<sup>22</sup> According to the report, the six guards assembled at May’s cell to put him in a restraint chair. The report says someone used a stun gun on him twice as well as pepper spray, then put him in the shower for decontamination.<sup>23</sup>

After an investigation, the Fulton County District Attorney charged all six jailers with felony murder, aggravated assault, battery, and violation of

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Fox 5 Atlanta Digital Team, *supra* note 6.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

their oath of office.<sup>24</sup> The former officers asked a lower court to throw out their indictments because they were not given notice before they were indicted and weren't allowed to be heard by the grand jury.<sup>25</sup> While grand jury proceedings are typically secret and the person facing potential charges is generally unaware the case is being heard, Georgia law allows "peace officers" to be given advance notice and an opportunity to testify before a grand jury.<sup>26</sup>

O.C.G.A. § 17-7-52 (a) provides: Before a bill of indictment or special presentment against a present or former peace officer charging the officer with a crime which is alleged to have occurred while he or she was in the performance of his or her duties is presented to a grand jury, the officer shall be given a copy of the proposed bill of indictment or special presentment and notified in writing of the contemplated action by the prosecuting attorney.<sup>27</sup>

O.C.G.A. § 17-7-52 does not define "peace officer," and it is not otherwise defined within Title 17.<sup>28</sup> The term is, however, defined elsewhere in Georgia Code. The parties' arguments on appeal, as well as the trial court's ruling, focus on determining which of these statutory definitions of "peace officer" may be applicable to O.C.G.A. § 17-7-52. Specifically, the State contended that the applicable definition of "peace officer" is defined within O.C.G.A. § 35-8-2 (8). The defendants maintain that the trial court properly applied the definition in O.C.G.A. § 16-1-3 (11). However, the statutory text contradicts the parties' arguments and precludes the mechanical importation of these independent definitions into O.C.G.A. § 17-7-52.<sup>29</sup> Indeed, the definitions in both O.C.G.A. § 16-1-3 and 35-8-2 are limited in application by their express

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<sup>24</sup> *Georgia high court reverses dismissal of murder charges against ex-jailers in detainee death*, AP NEWS (Oct. 11, 2023, 11:07 AM), <https://apnews.com/article/georgia-jailer-detainee-death-indictment-9f9e04ecbe2d679844970b3fd50826d2>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> O.C.G.A. § 17-7-52 (a).

<sup>28</sup> *State v. Cook*, 317 Ga. at 661.

<sup>29</sup> *Id.*

language, and O.C.G.A. § 17-7-52 does not incorporate by reference any independent statutory definition of “peace officer.”<sup>30</sup>

### ***Trial Court Holding***

Fulton County Superior Court Judge Robert McBurney determined that the six defendants were designated as "peace officers" who were "vested with a duty to maintain public order, i.e., keep the peace" and entitled to certain legal protections connected to indictments.<sup>31</sup> The court quashed the indictments against the defendants, ruling that they did not receive pre-indictment notice and an opportunity to be heard.<sup>32</sup>

### ***Supreme Court Holding***

The high court reversed the trial court’s ruling, finding the lower court incorrectly held that the former jail officers’ duty to control and supervise people held in the jail amounted to a duty to maintain the public peace.<sup>33</sup> The justices concluded that the jailers were not peace officers and therefore, weren’t entitled to pre-indictment protections.<sup>34</sup> The Supreme Court, Bethel, J., held that as a matter of first impression, defendants were not “peace officers” entitled to such statutory pre-indictment protections. Reversed.

## LEGAL REASONING

### ***Prior Background of O.C.G.A. § 17-7-52***

O.C.G.A. § 17-7-52, a statute enacted in 1975 in the Georgia Code, is a legal provision that addresses the rights and protections extended to current and former peace officers during the pre-indictment phase of legal

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<sup>30</sup> *Id.*

<sup>31</sup> *Ga. High Court Reverses Dismissal of Murder Charges Against Ex-Jailers in Detainee Death*, DAILY REPORT ONLINE (Oct. 11, 2023 4:39 PM), <https://www.law.com/dailyreportonline/2023/10/11/ga-high-court-reverses-dismissal-of-murder-charges-against-ex-jailers-in-detainee-death/>.

<sup>32</sup> *State v. Cook*, 317 Ga. at 659.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

proceedings.<sup>35</sup> An examination of the relevant sources of ordinary meaning reveals some accord on the basic definition of a peace officer.<sup>36</sup> “Contemporaneous dictionaries from around the time when the text was adopted offer a useful reference for [an ordinary-meaning] analysis.”<sup>37</sup> As a general matter, those sources broadly define a “peace officer” as an officer vested by law with the duty to maintain the public peace.<sup>38</sup>

This understanding of “peace officer,” a term with deep roots in Georgia law, finds support in a broader context. The term “peace officer” has been used in Georgia statutory law since at least 1793 and has also appeared with some regularity in our decisional law, beginning with the early opinions of this Court. However, the term predates even those sources and is in fact derived from the common law.<sup>39</sup>

This common-law understanding that peace-officer status flowed from the duties and powers vested in an officer is reflected in Georgia statutory and decisional law. Georgia case law has frequently spoken of peace officers in terms of their duty to maintain the public peace.<sup>40</sup> These judicial decisions were painted with broad strokes and portrayed a peace officer’s duty to maintain the public peace as generally pertaining to the enforcement of criminal laws.<sup>41</sup>

When O.C.G.A § 17-7-52 was enacted, the common-law connection between peace officers and the duty to maintain public peace was reflected in codified definitions of “peace officer,” as well.<sup>42</sup> The first codified definition

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<sup>35</sup> *Id.*

<sup>36</sup> *See State v. SASS Group, LLC*, 315 Ga. 893, 898-899 (2) (a), 885 S.E.2d 761 (2023); *See Muscarello v. United States*, 524 U.S. 125, 128-32 (1998).

<sup>37</sup> *See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts* 419 (2012); *See Muscarello v. United States*.

<sup>38</sup> *State v. Cook*, 317 Ga. at 661.

<sup>39</sup> *Id.* at 663.

<sup>40</sup> *See, e.g., Parker v. Travelers Ins. Co.*, 174 Ga. 525, 527 (1932), (“[A] policeman is a peace officer, whose duties are connected with the public peace[.]”); *Ramsey v. State*, 92 Ga. 53, 62 (1893) (“[T]he defendant was engaged in a violation of the public peace amounting to an offense against the laws of the State[;] and it was the duty of the deceased, as a peace-officer, to arrest him.”).

<sup>41</sup> *See, e.g., Ramsey v. State*. This case illustrates how judicial decisions broadly defined a peace officer’s duty to maintain public peace, emphasizing the enforcement of criminal laws.

<sup>42</sup> *State v. Cook*, 317 Ga. at 665.

of the term defined “peace officer” in the context of designating the class of public employees eligible to participate in the Peace Officers’ Annuity and Benefit Fund, as persons “required by the term of their employment to give their full-time to the preservation of public order, or the protection of life and property, or the detection of crime.”<sup>43</sup> The predecessor to current O.C.G.A. § 16-1-3 (11) defined a “peace officer” as “any person who, by virtue of his office or public employment, is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all crimes or is limited to specific offenses.”<sup>44</sup> Under the predecessor to current O.C.G.A. § 35-8-2 (8) (A), a “peace officer” was “any officer or member of a law enforcement unit who has the power of arrest, and who is responsible for the enforcing of criminal laws of this State or its political subdivisions.”<sup>45</sup>

The common thread between these statutory definitions and the decisional law discussed above is the peace officer’s duty to maintain the public peace generally by enforcing criminal laws through the power of arrest. Because these statutory definitions invariably incorporate the duty to maintain the public peace, they also reflect, whether explicitly or implicitly, the common law’s consistent recognition that the arrest power is integral to the performance of that duty. Because the Court must consider the statute’s proper construction, the standard of review is *de novo*.<sup>46</sup>

### ***Statutory Interpretation***

In all cases of statutory construction, the Supreme Court must give the text its plain and ordinary meaning, view it in the context in which it appears, and read it in its most natural and reasonable way.<sup>47</sup> For purposes of statutory construction, while the common and customary usages of the words in a statute are important, so is their context. In reviewing the context of words in a statute when construing a statutory provision, the Supreme Court may look to other provisions of the same statute, the structure and history of the whole

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<sup>43</sup> Ga. L. 1950, p. 50, § 8 (predecessor to current O.C.G.A. § 47-17-1 (5)).

<sup>44</sup> Ga. L. 1968, p. 1249, § 1.

<sup>45</sup> Ga. L. 1970, p. 208, § 2.

<sup>46</sup> See *Hankla v. Postell*, 293 Ga. 692, 693 (2013); See *Salve Regina College v. Russell*, 499 U.S. 225, 238 (1991).

<sup>47</sup> *State v. Cook*, 317 Ga. at 660.



statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.<sup>48</sup> The Supreme Court construes statutes in connection and harmony with the existing law and as part of a general and uniform system of jurisprudence.<sup>49</sup>

In the absence of an applicable statutory definition, courts must look first to the term's ordinary, natural, and most basic meaning.<sup>50</sup> Of course, the ordinary public meaning of the statutory text that matters is the meaning the statutory text had at the time it was enacted.<sup>51</sup> For purposes of the statutory pre-indictment protections afforded to peace officers charged with crimes allegedly occurring in performance of their duties, a “peace officer” is an officer vested by law with the duty to maintain the public peace.<sup>52</sup> Providing a tangential benefit to the public peace is not synonymous with a duty to maintain the peace within the community as a whole.<sup>53</sup>

Jailers employed by the county sheriff to work at the county jail were not “peace officers” for purposes of statutory pre-indictment protections afforded to peace officers charged with crimes allegedly occurring in performance of their duties.<sup>54</sup> Although the jailers’ work may have benefited public peace, the defendants were not entitled to pre-indictment protections prior to being indicted for felony murder and other crimes arising from the inmate's death.<sup>55</sup> Any authority jailers could exercise was constrained to a limited population of inmates and, perhaps, to certain members of the general public who voluntarily entered the jail’s boundaries via its controlled access points. There was no indication that jailers’ duty extended beyond the timeframe of their work shifts or bounds of jail.<sup>56</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> O.C.G.A. § 17-7-52.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

***Changes, Modifications, Clarifications, or Extensions Made by this Case***

The Georgia Supreme Court clarified the scope of duties for individuals working within the Fulton County Jail, specifically addressing whether these individuals could be considered peace officers under O.C.G.A. § 17-7-52. The court concluded that the defendants' duties were limited to maintaining order within the jail and supervising inmates, which did not equate to a general duty to maintain public peace within the community at large. This distinction was critical in determining that the defendants were not peace officers as traditionally conceived.<sup>57</sup>

Additionally, the court emphasized that the defendants' responsibilities were confined to their work shifts and the physical boundaries of the jail, contrasting with law enforcement officers who have a continuous duty to enforce the law and maintain public peace.<sup>58</sup> The court emphasized that a peace officer's role typically involves law enforcement activities beyond the confines of a jail or correctional facility, including patrolling communities, responding to emergencies, and engaging in preventive policing measures.<sup>59</sup>

Furthermore, the decision in *Cook* also influenced statutory interpretation principles. In *Ferguson v. Spraggins*, the court referenced *Cook* to highlight the importance of considering statutory text within its broader context, reinforcing that statutory silence should not be interpreted as an implicit provision.<sup>60</sup> Similarly, in *N. Am. Senior Benefits, LLC v. Wimmer*, the court cited *Cook* to support the approach of interpreting statutory text in light of surrounding provisions and the statute's overall context.<sup>61</sup>

Lastly, the *Cook* decision had a significant impact on procedural law. The Georgia Supreme Court in *Cook v. State* abolished the practice of out-of-time appeals, which had previously allowed defendants to file appeals outside

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<sup>57</sup> *State v. Cook*, 317 Ga. at 668.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See *Ferguson v. Spraggins*, 371 Ga. App. 727 (2024).

<sup>61</sup> See *N. Am. Senior Benefits, LLC v. Wimmer*, No. S23G1146, 2024 Ga. LEXIS 188 (Sep. 4, 2024).

the standard timeline under certain conditions. This change left defendants to pursue their claims through habeas corpus proceedings instead.<sup>62</sup>

#### IMPLICATIONS

The Georgia Supreme Court determined that correction officers did not meet the definition of "peace officers" for the pre-indictment protections afforded under O.C.G.A. § 17-7-52.<sup>63</sup> This statute requires that current and former peace officers be given a copy of the proposed bill of indictment or special presentment and be notified in writing before they are indicted.<sup>64</sup> The implications of this ruling are significant for the following reasons:

First, correction officers will not receive the pre-indictment notifications and protections that are afforded to peace officers. This is because the court found that the primary duty of correction officers, which is supervising and controlling inmates, is markedly limited compared to the broader duties of traditional peace officers, who are vested with the duty to maintain public peace and often have arrest powers.<sup>65</sup>

The definition of "peace officer" is interpreted more narrowly. The court emphasized that a peace officer is fundamentally an officer vested by law with the duty to maintain public peace, and the presence of arrest powers is a significant factor in this determination.<sup>66</sup>

This ruling sets a legal precedent for interpreting "peace officer" in the context of pre-indictment rights. The court's analysis and conclusion will likely influence future cases where the definition of "peace officer" is in question, particularly regarding the scope of duties and arrest powers.<sup>67</sup>

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<sup>62</sup> 1 LexisNexis Practice Guide: Georgia Criminal Law § 14.16 (2024).

<sup>63</sup> *Id.*

<sup>64</sup> O.C.G.A. § 17-7-52.

<sup>65</sup> *State v. Cook*, 317 Ga. at 668.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

Law enforcement agencies and corrections departments must adjust their policies and procedures to align with this ruling. They will need to ensure that correction officers are not afforded the pre-indictment protections under O.C.G.A. § 17-7-52, which are reserved for peace officers.<sup>68</sup>

The ruling could influence interpretations of “peace officer” in other statutes. The court's detailed analysis of what constitutes a peace officer may be referenced in other legal contexts where the definition is relevant.<sup>69</sup>

The legislature may amend the statute in response to this ruling. If there is a consensus that correction officers should receive similar protections, legislative action may be taken to explicitly include them under O.C.G.A. § 17-7-52 or a similar statute.<sup>70</sup>

Lastly, this could lead to future litigation and appeals. Parties affected by this ruling may seek further judicial review or challenge the interpretation in other contexts, potentially leading to additional case law development.<sup>71</sup> Overall, the Georgia Supreme Court's decision has far-reaching consequences for the legal status and protections of correction officers in Georgia.

#### CONCLUSION

The Supreme Court of Georgia considered a case concerning the rights of current and former peace officers under Georgia law. The court addressed two main issues: the proper definition of “peace officer” under O.C.G.A. § 17-7-52 and whether the defendants in the case met that definition.<sup>72</sup>

The court determined that the trial court's definition of a “peace officer” as an officer vested by law with a duty to maintain public peace was appropriate, but disagreed with the trial court's finding that the defendants,

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *State v. Cook*, 317 Ga. at 668.

<sup>72</sup> *Id.*

who were responsible for controlling and supervising inmates in a jail, fell within that definition.<sup>73</sup> The Supreme Court ultimately ruled that the defendants were not considered "peace officers" entitled to pre-indictment protections under the law.<sup>74</sup>

As a result of this decision, the Supreme Court reversed the trial court's ruling, establishing a precedent that clarifies the scope of statutory protections for peace officers in Georgia. Overall, this ruling delineates the scope of legal protections for correction officers versus peace officers within the State of Georgia, providing a more precise legal framework for how different types of law enforcement personnel are treated under the law.

**Prepared by:** *Regina Sampson*

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*