

4.1

Synopsis of Georgia Cases

**SECTION 4 SUBPOENAS, THE REPORTER'S PRIVILEGE AND
THE GEORGIA SHIELD LAW**

**4.1 SYNOPSIS OF CASES REGARDING
GEORGIA SHIELD LAW, O.C.G.A. § 24-9-30**

- 1990 *Izbicki v. Ridgeview Inst.* No. 1:89-CV-306-RCF (N.D.Ga., March 27, 1990)
(Freeman, J.):
- * Subpoena to non-party reporter appropriately limited to verifying that published statements were actually made by the parties to whom they were attributed.
 - * Georgia shield law is not limited to protection of confidential sources.
- 1990 *Vance v. Krause*, No 90-1687-5 (DeKalb County Superior Court, Nov. 21, 1990)
(Fuller, J.):
- * Where subpoena sought to compel testimony from non-party television station photographer who was also a long-time personal friend of defendant, trial court held that shield law protected from disclosure only information obtained by photographer as a news gatherer for purposes of dissemination to the public.
- 1991 *Stripling v. State*, 261 Ga. 1 (1991) (Bell, J.):
- * Held that trial court did not err in allowing non-party reporter to invoke "shield law" privilege against disclosure of the identity of certain confidential sources — "three former employees of the Douglas County Sheriff's Department" — who had informed her of "precise details on a systematic policy of eavesdropping" of attorney-client communications at the Douglas County jail. A death row inmate sought to compel the testimony for purposes of a motion for new trial.
- 1991 *Nobles v. State*, 210 Ga. App. 483 (1991) (McMurray, J.):
- * In a highly publicized criminal action, a television station reported while the jury was out that it had learned the jury was eleven to one for conviction and one juror was holding out and would not budge. After the jury returned its verdict, trial court polled the jury, which stated that the facts as to their deliberations had been otherwise and, in addition, that no juror had seen the telecast. Defendant subpoenaed the station's reporter for purposes of supporting a mistrial motion on grounds of jury tampering or misconduct.
 - * The trial court quashed the subpoena on the grounds that since the report was inaccurate and the jury had not seen it, no impropriety had taken place and piercing the reporter's shield of confidentiality would bring forth no relevant information.
 - * Affirmed. The shield law was not "meant to be used to uncover the source of mere courtroom gossip or speculation that appears to have been involved here. Nor has it been shown that the disclosure of the source of

this erroneous information was in any way material or relevant, or necessary to the presentation of appellant's case. Moreover, the trial court had instructed the jury on several occasions that they were not to read, listen or watch any news reports, nor to discuss the case among themselves or with anyone else."

1992 *Miller v. Greer*, No. 91-5492-7 (DeKalb County Superior Court, March 20, 1992) (Peeler, J.):

- * Action to compel reporter to answer questions about the source of information about an article. Requested relief denied as plaintiff had failed to exhaust alternative, non-media sources from which information might be obtained. Of the thirty-one possible alternative sources, plaintiff had only deposed a handful.

1993 *State v. Rower*, No. 93-1157-18 (Cobb County Superior Court, March 10, 1993) (Staley, J.):

- * Trial court initially quashed the State's grand jury subpoena demanding a newspaper reporter's audiotapes of a "jailhouse" interview with a defendant who had confessed to being the triggerman in a highly-publicized murder, holding that the State had neither carried its burden under the shield law nor demonstrated a waiver of the privilege. After allowing the State to reopen the evidence as to "necessity" and "alternative sources", the trial court granted the State's motion for reconsideration and enforced the grand jury subpoena holding the State had carried its burden under each of the showings required by the privilege.
- * Georgia Supreme Court, No. S93A1072, affirmed without opinion.

1995 *Royals v. Spearman*, No. CV693-121 (S.D. Ga., September 15, 1995) (Moore, J.):

- * Augusta Chronicle reporter wrote a series of articles about allegations of sexual abuse made by female prisoners, who later sued prison and certain prison personnel for violation of their constitutional rights. Defendants sought to compel reporter to disclose names of confidential informants and computer transcripts of interviews with informants.
- * Trial court denied motion to compel on ground that "[d]efendants have not convinced the Court that this information is highly relevant and necessary to the proper preparation or presentation of their case."

1997 *CSX Transp. v. Cox Broadcasting, Inc.*, No. E-59240 (Fulton County Superior Court, May 29, 1997) (Bonner, J.):

- * Action in equity by CSX Transportation seeking discovery from WSB-TV and WXIA-TV of their news coverage of an accident at a railroad crossing involving a CSXT train and a motor vehicle.
- * Requested relief denied as the information and knowledge sought by CSXT was privileged pursuant to the shield law, O.C.G.A. § 24-9-30, and CSXT could not make the showing required by the statute to justify compelling the discovery sought.

1999

In Re Paul, 270 Ga. 680, 513 S.E.2d 219, (Fletcher, J.):

- * Reversing the trial court, the Supreme Court ruled that the state shield law protected a news reporter from disclosing his unpublished information obtained during a jailhouse interview. The Court explicitly held that Georgia's statutory reporter's privilege applies both to confidential and non-confidential information and that a reporter ordered to disclose such information is entitled to an immediate, direct appeal to the Georgia Supreme Court.

2001

Atlanta Journal-Constitution v. Jewell, 251 Ga. App. 808 (2001) (Johnson, J.):

- * Refusing to adopt a constitutional reporter's privilege for confidential sources in a case where the news reporter is a party, but requiring protection of such sources under general civil discovery procedures. Accordingly, before such sources must be disclosed, the court must require that the plaintiff "specifically identify each and every purported statement he asserts was libelous, determine whether the plaintiff can prove the statements were untrue, taking into account all the other available evidentiary sources, including the plaintiff's own admissions, and determine whether the statements can be proven false through the use of other evidence, thus eliminating the plaintiff's necessity for the requested discovery."

2002

In re: Morris Communs. Co., 258 Ga. App. 154 (2002) (Smith, J.):

- * The State subpoenaed a reporter for the Georgia Times-Union seeking testimony regarding two articles that she had written about a robbery. The State wanted to use the reporter to authenticate information that appeared in the articles. The newspaper filed a motion to quash pursuant to Georgia's qualified reporter's privilege, O.C.G.A. § 24-9-30. The trial court denied the motion to quash.
- * The Court of Appeals affirmed the trial court's decision, holding that the reporter had waived the privilege, but only as to the information that actually appeared in the articles. Because the subpoena did not seek "substantive, confidential or unpublished" materials, the reporter was required to testify concerning the limited information that was sought.

2004

Torrance v. Shook, No. 03-SV-55 (State Court of Toombs County, Jan. 8, 2004) (Mikell, J.):

- * The Savannah Morning News published a series of articles concerning the death of a man whose body was found in the swimming pool of the Vidalia city attorney. The plaintiff filed a defamation case against the defendant who he claims made remarks indicating that plaintiff was involved in the man's death. The plaintiff subpoenaed a reporter for the Savannah Morning News seeking his deposition and his files concerning the man's death.
- * The trial court quashed the subpoena on the grounds that the testimony and information sought was privileged under O.C.G.A. § 24-9-30 and the plaintiff failed to show that he could not obtain the information by

alternative means. The Court noted that the plaintiff also had sued the newspaper and the reporter for defamation in Richmond County and discovery in that case was ongoing.

2007

Flynn v. Roanoke Cos. Group, Inc., No. 1:06-CV-1809-TWT, 1:07-MD-1804-TWT, 2007 WL 4564113 (N.D. Ga. Dec. 21, 2007) (Thrash, J.):

- * Subpoena issued to CNN for interview footage.
- * CNN moves to quash claiming reporter's privilege and that footage is protected by Georgia Reporter's shield.
- * Court finds CNN is entitled to qualified reporter's privilege against disclosing all unaired footage of program in question, but this does not extend to non-confidential interview with plaintiff in this action, which was partly broadcast.
- * Court explains it "is not persuaded that the freedom of the press is in anyway hampered when a news broadcasting corporation turns over nonconfidential video footage of a plaintiff interview."
- * However, CNN is entitled to withhold unaired footage that has nothing to do with plaintiff because subpoena fails to explain why every piece of unaired footage is either relevant or necessary to defense.

2008

Hendrix v. Highsmith, No. 07 CV 1290 B, 2008 WL 2078966 (Ga. Super. Ct., Hall County May 9, 2008) (Gosselin, J.):

- * Subpoena issued to news reporter seeking to obtain discovery of document sent anonymously to reporter leaking results of drug test. Court denied motion to compel, finding that plaintiff had not overcome privilege provided by O.C.G.A. § 24-9-30.
- * Plaintiff failed to satisfy any of three requisite conditions necessary to overcome privilege.
- * Plaintiff failed to show that he exhausted non-media sources from which the information might be obtained. Court found it pertinent that plaintiff stipulated with defendants not to pursue discovery until after court ruled upon motion to compel information from reporter. Plaintiff did not depose any of numerous alternative sources from whom plaintiff might have determined when and how drug test was leaked.
- * Plaintiff failed to show how the document was material, relevant or necessary to the proper preparation or presentation of his case. The document sent to the reporter was not necessary to prove that the drug test was leaked. That fact was undisputed and could easily be stipulated to by the parties. Even if document did contain source-identifying information, it might be cumulative of other evidence because other circumstantial evidence existed regarding identity of person who leaked drug test.
- * Even if plaintiff could satisfy all three factors of privilege exception, motion to compel was premature because plaintiff needed to show claims were viable and that disclosure of the information would be critical to prosecution of his case.

2008

Giddens v. Advantage Mobility Solutions, Inc., No. 08A84548-3, 2008 WL 4947726 (DeKalb County State Ct. Nov. 9, 2008) (Purdum, J.):

- * Plaintiffs, individuals involved in litigation relating to injuries sustained in elevators, issued subpoena to news reporter seeking information pertaining to investigative report regarding elevators. Reporter filed motion to quash asserting protection under O.C.G.A. § 24-9-30. Court granted motion to quash.
- * Court found that plaintiffs had made no showing that the evidence was not reasonably obtainable by other means or that it was necessary to the proper preparation or presentation of the case. While plaintiffs had noticed the deposition of one of the individuals who had overheard a conversation when defendant made an admission at issue, plaintiffs did not seek the information from other witnesses who were present. Plaintiffs also failed to show that information was necessary to case because they did not seek to obtain it from other witnesses. Court rejected argument that it was necessary for plaintiffs to obtain video from reporter because it would present the alleged admission more powerfully than would testimony from other witnesses, finding that such a rationale would eviscerate the privilege.
- * Court held that reporter had not waived privilege not to disclose unaired audio and other information by broadcasting another portion of the tape.

2009

Soloski v. Adams, (N.D. Ga. April 30, 2009) (unreported) (Shoob, J.)

- * Court overturned an order issued by a Magistrate Judge that had required a former Atlanta Journal-Constitution journalist, Ms. Simmons, to disclose the identity of a confidential source.
- * Court found clear error in at least two respects: (1) the Magistrate Judge's finding on exhaustion of alternative sources, and (2) the Magistrate Judge's finding on the "necessity" of the identity of the confidential source to the case.
- * Court noted that by failing to depose Soloski's accuser, "who arguably had the greatest interest in publicizing the investigation, plaintiff clearly failed to 'beat the bushes' to identify Ms. Simmons' source."
- * Court was highly critical of a stipulation entered into between the plaintiff and defendants that stated that depositions of several University administrators had established that the identity of the source "could not be reasonably obtained other than by asking Ms. Simmons directly." Court held that: "[T]he duty to exhaust reasonable alternative sources of information is not one that the parties can simply 'stipulate' away. Nor is the Court required to accept a self-interested stipulation that is patently false."
- * Court concluded that the identity of the initial source was not necessary to Soloski's privacy claim because the on-the-record confirmation of the investigation into alleged breach of sexual-harassment policy by Soloski by a University official gave him an independent basis to allege a privacy violation if such a cause of action existed under Georgia law (an issue the

Court did not reach).