IN THE COURT OF APPEALS
STATE OF GEORGIA

Christopher Glenn, Appellant vs. The State of Georgia, Appellee	Case No: A19A0334

BRIEF OF *AMICUS CURIAE*,
THE GEORGIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

I. The Interests of *Amicus*

A frequent "friend of th[is] Court" as well as the Georgia Supreme Court, GACDL is a professional association of Georgia's criminal defense bar. It is comprised of lawyers, both public defenders and private counsel, who regularly answer the Constitution's clarion to defend those accused of crime and to secure the processes of law to which they are due.

We write here in support of the Appellant: Christopher Glenn.

Christopher Glenn was arrested for taking an afternoon walk near a school. The trial court found that that arrest was unlawful, and his resistance to it justified, because the officers were not acting in the course of their lawful duties. But he revoked Glenn for interference with government property because Glenn kicked out a patrol car's door immediately after being placed

inside. The trial court found that while Glenn could be justified in resisting arrest, there was no legal authority justify his destruction of property.

We ask this Court to hold, as it has in the past, that an officer may not salvage an unlawful arrest by finding a popped shirt button or blood on his collar. Georgia's laws of justification do not privilege property over people. As a friend of the court, we hope to clarify this simple but important principle of Georgia law.

II. Statement of the Case

This Court granted an application to appeal from an order of the Clarke Superior Court partially revoking a probated sentence. (R. 1, 20, 24.) This Court has jurisdiction under Art. VI, § V, ¶ III of the State Constitution.

Christopher Glenn took a walk near a school. Someone called 911. Responding officers were filmed arresting him for loitering—an arrest that he resisted. After he was placed in a patrol car, he kicked a door off its hinges. The State sought to revoke his probation for loitering (OCGA § 16-11-36), obstruction of officers (OCGA § 16-10-24), and interference with government property (OCGA § 16-7-24).

At the hearing, the court found that, because Glenn committed no crime by taking an afternoon walk, officers were not "not operating in the lawful discharge of [their] official duties when they arrested him." *Woodward*

v. State, 219 Ga.App. 329, 330 (1995). That meant he could not be revoked for either loitering or obstruction. (T. 42.)

But, although the court acknowledged "a right to . . . attack the validity of the arrest or detainment or obstruction," it found that there was "no good legal basis to say that you're now justified to tear up stuff or destroy or damage property." (T. 42-43.) Glenn's probation was revoked on that basis. (R.20.)

III. The Issue on Appeal

The issue before this Court is whether the revocation court correctly held that the wrongfully arrested may resist an officer, but not his property.

IV. The Views of *Amicus*

The State argues that Georgians may only be justified in defending themselves against people, not property. Under this theory, a child who kicked her way out of a kidnapper's trunk would have no defense to a charge of criminal damage to property. It would only be through prosecutorial discretion that she would not find herself in handcuffs alongside her attacker. Similarly, a woman resisting a rape might be justified in using force, perhaps even deadly force, against her assailant. But she must be careful to do so without ripping his shirt or damaging the gun he is pointing at her.

Few Georgians would find these results reasonable. And courts should

avoid reading laws in ways that create absurd results. Here, OCGA § 16-3-20 states that: "[t]he fact that a person's conduct is justified is a defense to prosecution for **any crime** based on that conduct."

Reading the text literally, by its plain language, as OCGA § 1-3-1(b) suggests, presents a common-sense rule: people lawfully resisting a violent felony need not take special measures to protect their attacker's property. By contrast, the State's proposed reading changes the meaning of the word "any" and significantly weakens the natural right of self-defense embedded in American law. Under this regime, law-abiding homeowner must worry, in shooting a home invader, whether he might illegally damage the criminal's property in lawfully ending his life.

Even if the statutory language were not plain, this Court's opinion in *Moore v. State*, 234 Ga.App. 332, 333 (1) (1998) has already established that even a rightfully arrested Georgian is entitled to a charge on justification when he kicks out the window of a patrol car because he is struggling to breathe. Here, the defendant kicked at a patrol car's door immediately after being placed inside because he was attempting to escape from unlawful confinement—exactly the motivation that justified his obstruction of the officers attempting his wrongful arrest. (T. 24).

The facts, as found by the trial court, support justification. And the law,

as decided by this Court, allows for it. *See Wilson v. State*, 152 Ga. App. 695, 697, (1979) (noting that probationer had "ample opportunity" to raise a justification defense at his revocation hearing). Probationers should not be revoked for things that, under Georgia law, they are justified in doing—here, resisting the serious violent felony of kidnapping.

Because the trial court's sole basis for revocation was its belief that the destruction of property can never be justified, we ask that that this Court reverse and remand. In a country founded on justified resistance to unlawful government action, even probationers have a right to self-defense.

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