



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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RODRIGUEZ ET AL. V. THE STATE (S08A1928)

The Supreme Court of Georgia has upheld Georgia's anti-gang statute as constitutional. In a unanimous opinion written by **Justice George Carley**, the Court finds that the Georgia Street Gang Terrorism and Prevention Act "is not unconstitutionally overbroad" and does not "infringe upon the First Amendment right to freedom of association."

Efrain Rodriguez and Gilberto Rodriguez have challenged the statute as unconstitutional prior to their trial in **DeKalb County**, where they were charged in 2006 with the murder of Jesus Silencio Ramirez and the aggravated assault of Claudia Silencio. The indictment states they committed the crimes "while associated with a criminal street gang" known as "18th Street." The State will try to prove that the Rodriguezes beat Ramirez over the head with a baseball bat and shot him to death because they believed he was a member of a rival gang. After the trial court denied their pre-trial motion, the Rodriguezes appealed to the state Supreme Court. This is one of two appeals pending before the high court in which lawyers claim the anti-gang statute (Official Code of Georgia § 16-5-4) is unconstitutionally vague and overbroad and tramples on the right to freely associate.

But in today's opinion, the high court disagrees, citing the General Assembly's own statement as a clear expression of the legislature's intent. "It is not the intent of this [Act] to interfere with the exercise of the constitutionally protected rights of freedom of expression and association," the legislature's statement says. "...The General Assembly, however, further finds that the State of Georgia is in a state of crisis which has been caused by violent street gangs..."

The opinion states: “Our interpretation of [the law] is the most consistent with the above-quoted legislative statement of intent...”

Attorneys for Appellants (Rodriguezes): Gerard Kleinrock, Corinne Mull, Daryl Queen, Leeanne Anthony, Andrew Lynch

Attorneys for Appellee (State): Gwendolyn Keyes Fleming, District Attorney, Barbara Conroy and Michael Carlson, Dep. Chief Asst. D.A.’s, John Floyd, Spec. Asst. D.A.

SMITH V. SMITH (S08F1706)

The Georgia Supreme Court has unanimously reversed a **Douglas County** court ruling in a divorce case that had awarded the former wife a portion of her former husband’s military pay. Henry Grady Smith, Jr. and Felita Marshall Smith were married and divorced twice. The first marriage ended in 1988, they remarried in 1999 and divorced again in 2008. At issue was the trial court’s award to her of \$275 a month from his military pay. He appealed on the grounds that he didn’t retire from the military until 1995, and therefore, his retirement pay wasn’t part of the marital property when they remarried in 1999.

In today’s opinion, written by **Chief Justice Leah Ward Sears**, the Court agrees that the funds in his military retirement account are his separate property and not subject to division. “Accordingly, the trial court erred in awarding any part of Mr. Smith’s military retirement pay to Ms. Smith,” the opinion says.

Attorney for Appellant (Henry): Faith Elaine Shoemaker-Shiffert

Attorney for Appellee (Felita): Felita Marshall Smith, “pro se”

NIXON V. THE STATE (S08A1877)

The state Supreme Court has upheld the murder conviction and life prison sentence of Tayari Nixon of **Coffee County** for the murder of his 2-month-old baby boy, Savieon Nixon. The baby was pronounced dead Nov. 22, 2006 after emergency room staff tried for an hour to restore his vital signs. An autopsy revealed extensive old and new injuries, including two fresh skull fractures and massive brain trauma, which the medical examiner testified would have caused the infant’s death within two hours. The baby also had been slapped and scratched, and suffered three sets of broken ribs, some of which had been inflicted three to four weeks earlier.

In today’s unanimous opinion, written by **Chief Justice Leah Ward Sears**, the high court rejects Nixon’s argument that the evidence was insufficient to convict him. The baby’s mother, Denise Blake, and her father, Jeff Blake, both had been with the child within the previous 24 hours, and the defense argued either of them could have killed Savieon. Jeff Blake normally cared for his grandson until 3 each day while his daughter worked. But on the day the baby died, Nixon, who had recently lost his job, remained home with Savieon when Denise Blake left between 7 and 8. She testified the baby was fine when she departed. Nixon was the only adult with him until 12:35, when Savieon was delivered unresponsive to the hospital.

The evidence presented to the jury, today’s opinion says, “supports only one reasonable hypothesis: that Nixon beat Savieon and caused his death. Accordingly, we conclude that the evidence is sufficient to support Nixon’s conviction for felony murder.”

Attorney for Appellant (Nixon): John Culp

Attorneys for Appellee (State): Richard Currie, District Attorney, Thurbert Baker, Attorney General, Mary Beth Westmoreland, Dep. A.G., Paula Smith, Sr. Asst. A.G., Jason Fisher, Asst. A.G.

IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

- * George Keller Barnett (Carroll Co.) **BARNETT V. THE STATE (S08A1554)**
- * “Mac The Hung” (Fulton Co.) **HUNG V. THE STATE (S08A1811)**
- * Alvin Dexter Sanford (Fulton Co.) **SANFORD V. THE STATE (S08A1636)**
- * William Thomas Sheppard (Richmond Co.) **SHEPPARD V. THE STATE (S08A1448)**
- * Dameion Timiah Spears (Emanuel Co.) **SPEARS V. THE STATE (S09A0195)**

In **BELL V. THE STATE (S08A1785)**, the Supreme Court has upheld the murder conviction and life prison sentence of Curtis C. Bell of **Ben Hill County**. But it has vacated his aggravated assault conviction, which should have been merged with his malice murder conviction. The Court also has vacated Bell’s 30-year sentence for armed robbery, which prosecutors agreed was an error. The Court is sending the case back to the trial court for resentencing on the robbery charge.