



## Supreme Court of Georgia

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## SUMMARIES OF OPINIONS

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### **BRAGG ET AL. V. OXFORD CONSTRUCTION COMPANY (S08G1031)**

In a 4-to-3 decision, the Supreme Court of Georgia has upheld a ruling by the Georgia Court of Appeals which agreed with a lower court that a road construction company was not liable for a car wreck in which a pregnant woman was severely injured and lost her baby. At issue in this case is whether a decades-old doctrine of law should be abolished. Called “the acceptance doctrine,” it essentially says that once a contractor completes the work and the owner accepts it, the contractor is no longer liable to third parties.

In this **Dougherty County** case, a woman was killed in April 2004 when she collided head on with Francesca Bragg, who was more than 6-months pregnant. In addition to losing the baby, a girl, Bragg suffered severe abdominal trauma and other injuries, and her 2-year-old daughter broke her neck. More than seven months earlier, Oxford Construction Company, had performed spot leveling work on the road under a contract from the County. Bragg and her family filed a personal injury-wrongful death suit against Oxford, arguing the company should be held liable and the archaic “acceptance doctrine” should be replaced by a more modern rule that is in place in most states. But the trial court ruled in favor of the company, and the Court of Appeals affirmed the judgment.

In today’s ruling, the majority agrees, finding that Oxford was not responsible for the design of the road and never said it was an expert in designing such repairs. “Oxford just did what it was instructed to do by the County, and the County accepted Oxford’s work when the work was completed,” says the decision, written by **Justice Harold Melton** and joined by **Justices George Carley, Hugh Thompson and Harris Hines**. There is no evidence that Oxford

performed negligently, the majority states, and if anyone should be held liable, it should be the County – “the entity that hired Oxford, ordered it to patch the road, and accepted Oxford’s completed work.” In this case, the majority finds, “[a]pplication of the acceptance doctrine makes sense.” “The fact that other jurisdictions have rejected the rule, however, does not mandate that Georgia do the same.”

But in her dissent, **Presiding Justice Carol Hunstein** disagrees, arguing that the acceptance doctrine is “based on principles long since disapproved” and rooted in an 1842 decision now viewed as “a fishbone in the throat of the law.” Joined by **Chief Justice Leah Ward Sears** and **Justice Robert Benham**, she would abandon the doctrine for a “modern rule” that states that “a building or construction contractor is liable for injury or damage to a third person even after completion of the work and its acceptance by the owner where it was reasonably foreseeable that a third person would be injured by such work...” Of 44 states that have considered the issue, 33 have adopted the modern rule, the dissent says.

**Attorneys for Appellants (Braggs):** Ralph Scoccimaro, Craig Webster

**Attorneys for Appellee (Oxford):** Frank Lowrey IV, Nicole Iannarone, Carrie Christie

#### **DAVIS V. FRAZIER, WARDEN (S08A1786)**

The Georgia Supreme Court has reversed a lower court’s denial of an indigent man’s request for a new appeal. Norman Davis, who was convicted in **Hancock County** of aggravated child molestation and kidnapping, went through seven court appointed attorneys during his 2000 trial. After the seventh attorney withdrew, the trial court informed him that he’d either have to hire an attorney or represent himself. He chose the latter, eventually appealing first to the Georgia Court of Appeals and then to the Georgia Supreme Court, which in 2006 directed the Court of Appeals to dismiss his appeal because he’d missed the filing deadline. Shortly after, Davis filed a petition for habeas corpus – a civil proceeding that allows already convicted prisoners to challenge their conviction in a court located in the county where they’re serving time. At a 2007 hearing, Davis said the reason his notice of appeal was late was because he was under the impression the trial court was going to appoint another lawyer to handle his appeal. When he didn’t hear anything, he drafted his own notice, but it got bogged down in the prison mail system.

In today’s unanimous decision, written by **Presiding Justice Carol Hunstein**, the Supreme Court finds that the record shows the trial judge did in fact tell Davis he would appoint him a lawyer if he wanted to appeal. “He was advised by the trial court that, despite his serial dismissal of appointed counsel while pursuing that motion, such an appointment would be made,” the opinion states. “This did not occur, due to a failure on the part of the trial court rather than any reason attributable to Davis’s previous dismissals of counsel.” As a result, “the judgment of the habeas court is reversed, and the case is demanded with direction” that Davis be appointed a lawyer “to determine if there is any justifiable ground for an appeal from the original convictions.”

**Attorney for Appellant (Davis):** Norman Davis, representing himself

**Attorneys for Appellee (State-Warden):** Thurbert Baker, Attorney General, Benjamin Pierman, Asst. A.G.

**THE STATE V. FOLSOM (S08A1621)**

**FOLSOM V. THE STATE (S08X1622)**

The Georgia Supreme Court has thrown out a pre-trial ruling and is sending this case back to a **Haralson County** judge. The high court has ruled that the lower court used the wrong legal standard in deciding that certain evidence should be suppressed when a man goes on trial for murder and kidnapping.

Kenneth Doyle Folsom and a co-defendant face charges of kidnapping and murder in the 2007 death of Bobby Timms. Michael McCain, the co-defendant, had allegedly made terroristic threats against Timms, reportedly over a report made to the Department of Family and Children Services regarding McCain's children. About a month after Timms was reported missing, his body was found at the bottom of an abandoned well. After obtaining warrants for McCain's arrest, officers went to Folsom's house where they found Folsom but not McCain. Folsom spoke to the officers and agreed to go into the Sheriff's office to talk further. Once there, he was interviewed for more than six hours.

A video recording of that interview shows, according to today's opinion, that Folsom is heavysset, walks with a cane and is on oxygen. The interview by two officers took place in a small room where Folsom sat in the far corner, blocked from the door unless one of the officers moved. During the first few hours, Folsom was not arrested, read his Miranda rights or told he could leave. He denied involvement in Timms' death but told authorities he owned a .380 pistol that he had pawned. While the interview continued, other officers went to the pawn shop and seized the gun they believed had been used to kill Timms. They then obtained an arrest warrant and read Folsom his Miranda rights.

The trial court ruled that all the evidence obtained before the Miranda warnings cannot be presented to a jury. The State argued the trial court was wrong because Folsom was not under arrest for the first several hours of the interview.

In today's unanimous decision, written by **Justice Robert Benham**, the Supreme Court has found that the trial court relied on two outdated opinions by the Georgia Court of Appeals, *State v. Wilson* and *State v. Hendrix* which laid out a four-factor analysis in determining whether a person is restrained to the point of believing he's under arrest. The Georgia Supreme Court has found the four factors irrelevant in determining custody for Miranda purposes. Rather, the "proper inquiry is how [a] reasonable person in [the] suspect's position would perceive his situation," says today's opinion, quoting a 1998 Supreme Court decision, *McAllister v. State*. Therefore, decisions adopting the four-factor analysis "are hereby disapproved insofar as they consider irrelevant factors in lieu of applying the objective inquiry." The Court has remanded the case to the Haralson County court with direction to apply the correct legal standard.

**Attorney for State:** Charles Rooks, Chief Asst. District Attorney

**Attorney for Folsom:** Oliver Browning, Jr., Public Defender's Office

**BRADFORD V. THE STATE (S08A1470)**

The Georgia Supreme Court has ordered a new trial for Shannon Bradford, who was convicted in **Dawson County** of trafficking in amphetamine and other drug charges. She appealed her convictions on several grounds, including that her trial in Dawson County violated the constitutional rule against double jeopardy because she had already been prosecuted and pleaded guilty to similar charges in Gwinnett County.

But in today’s unanimous decision, written by **Justice Harold Melton**, the Supreme Court has found that as a result of the facts known by officers when they investigated, “her prosecution in Dawson County was not barred by her former guilty plea conviction in Gwinnett County.” However, the Dawson County judge’s denial of her attorney’s request that the trial be postponed was grounds for reversing the convictions, today’s ruling says. Bradford’s attorney requested the continuance after the State announced at the beginning of the trial that it would prove Bradford had committed the offense of trafficking sometime during a two-week period rather than on the day stated in the formal indictment, for which she had an alibi. The denial of her request for a continuance, the attorney argued in the appeal, robbed him of the chance to prepare her case. The high court agrees, stating that “Bradford’s motion for a continuance should have been granted.”

**Attorney for Appellant (Bradford):** Rafe Banks III

**Attorneys for Appellee (State):** Lee Darragh, District Attorney, Michael Morrison, Asst. D.A.

## **OTHER CASES APPEALED FROM THE GEORGIA COURT OF APPEALS**

### **THOMPSON ET AL. V. ALLSTATE INSURANCE COMPANY (S08G1594)**

### **THOMPSON ET AL. V. GEORGIA FARM BUREAU CASUALTY (S08G1595)**

The Georgia Supreme Court has reversed a Court of Appeals decision in this **Bryan County** case, ruling that a man and his wife were wrongly denied insurance coverage.

In 2002, Richard and Laura Thompson were in a wreck caused by Randall Hiram Bacon, whose vehicle crashed into the back of the Thompsons’ car. Mr. Thompson was seriously injured; the parties give differing views of whether Mrs. Thompson was also injured. The Thompsons sued Bacon who was covered by liability insurance. They also sought underinsured motorist coverage from Allstate Insurance Co. and Georgia Farm Bureau Casualty Insurance Co. Underinsured motorist coverage is insurance that pays for injuries resulting from a wreck caused by another driver who does not have enough liability insurance to cover the injuries.

Prior to trial, the Thompsons reached a settlement with Bacon’s insurance company which agreed to pay the Thompsons the limits from Bacon’s liability policy of \$100,000 per person. In return, the Thompsons signed a release saying they would take no further action against Bacon, but could continue to seek underinsured motorist insurance benefits because Mr. Thompson’s injuries cost more than \$100,000. But following the settlement, Allstate and Georgia Farm filed motions asking the court to rule in their favor without a trial on the grounds that the Thompsons were precluded by law from recovering underinsured motorist benefits because they failed to exhaust the total amount of bodily injury liability coverage available to Bacon. Under his policy, they were entitled to at least \$200,000 because, they argued, both husband and wife said they were injured in the wreck. The trial court denied the insurance companies’ motions, but the Court of Appeals reversed that decision, finding that the settlement language was unambiguous.

In today’s unanimous decision, written by Justice George Carley, “we conclude that, although Appellants were required to exhaust available liability coverage, the release did not unambiguously show that Mr. Thompson settled for less than the limits stated in the liability policy...”

**Attorney for Appellants (Thompsons):** Wilson Smith

**Attorneys for Appellees (Insurance):** Fred Valz, III, G. Mason White, James Kreyenbuhl

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

- \* John Alexander (Chattooga County)      **ALEXANDER V. THE STATE (S08A1586)**
- \* Quincy Ballard (Henry County)      **BALLARD V. THE STATE (S08A1720)**
- \* Lawrence Cane, Jr. (Gwinnett Co.)      **CANE V. THE STATE (S08A1847)**
- \* Renaldo Phillips (DeKalb Co.)      **PHILLIPS V. THE STATE (S08A1500)**
- \* Annie Grace Sheppard (Clarke Co.)      **SHEPPARD V. THE STATE (S09A0056)**
- \* Christopher F. Timmreck (Gwinnett Co.)      **TIMMRECK V. THE STATE (S09A0155)**
- \* Tito Flores Vega (Chatham Co.)      **VEGA V. THE STATE (S09A0023)**

**IN DISCIPLINARY MATTERS**, the Supreme Court has ordered that the following attorneys be **disbarred**:

- \* Martha F. Dekle      **IN THE MATTER OF MARTHA F. DEKLE (S09Y0289)**
- \* Neal Harley Landers      **IN THE MATTER OF NEAL HARLEY LANDERS (S09Y1633)**
- \* John M. Shinall      **IN THE MATTER OF JOHN M. SHINALL (S08Y2018)**

The Court has accepted petitions for **voluntary surrender of license** – tantamount to disbarment – from:

- \* James F. Stovall III      **IN THE MATTER OF JAMES F. STOVALL III (S09Y0610)**