



## Supreme Court of Georgia

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## SUMMARIES OF OPINIONS

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### **DAKER V. THE STATE (S16A1372, S16A1373, S16A1393)**

The Supreme Court of Georgia has unanimously upheld the convictions and life-plus-47-year prison sentence given to Waseem Daker for the 1995 murder of a Delta flight attendant and the multiple stabbing of her 5-year-old son.

In this high-profile **Cobb County** case, the high court has rejected Daker's arguments in his direct appeal that the trial court treated him unfairly, that the judge should have been forced to recuse herself due to bias, and that the Supreme Court's requirement limiting his brief to 50 pages was unconstitutional.

In today's opinion, "we decide nothing about the legal sufficiency of the evidence in this case," because Daker – who is representing himself without an attorney – requested that the record delivered by the trial court to the Supreme Court omit all the transcripts from his trial.

"In murder cases, we usually consider the legal sufficiency of the evidence, even in cases in which the defendant does not dispute that the evidence is sufficient to sustain [his] convictions," the opinion says. "But in this case, [Daker] directed the clerk of the trial court to omit all of the pretrial and trial transcripts from the record on appeal.... Without the trial transcripts, we cannot adhere to our usual practices."

According to the evidence at his Cobb County trial, on Oct. 23, 1995, Daker illegally entered the downstairs apartment of Karmen Smith and her 5-year-old son, Nick. Smith and her son lived in the same building on Old Hunter's Trace as Loretta Spencer Blatz, who lived upstairs with her 10-year-old daughter, Christina. According to State prosecutors, Daker had been stalking Blatz since shortly after meeting her playing paintball when he was 17 and she was 12 years older. The stalking progressed to the point that Blatz (then Spencer) first changed her

locks, then eventually moved into the building on Old Hunter's Trace where Smith and her son lived downstairs. According to the State, on Oct. 23, after entering the downstairs apartment, Daker strangled Smith to death as an act of revenge against Blatz. Prosecutors said Smith had been bound and had friction burns on her chin. Her body had been punctured with an ice pick or needle. When Nick returned that day from school looking for his mother, Daker pulled Nick into a bedroom, covered his mouth, and stabbed the child 18 times, leaving him for dead. A couple who regularly babysat Christina found the boy in a pool of blood and police later found Smith's body in her bed. Nick survived the brutal attack, but his mother was dead. After learning about the stalking, law enforcement officers interviewed Daker the next day at his parents' home in Duluth, where he lived. He denied knowing where Blatz lived or stalking her. No arrest was made at the time.

However, Daker was subsequently convicted of the aggravated stalking of Blatz and served 10 years in prison. But the case involving Smith's murder went "cold" for more than a decade until 2009 when advances in DNA testing identified hairs found on the blanket covering Smith's body as Daker's. He was arrested Jan. 15, 2010. Inside his car, police found three knives, a box cutter, leg irons, handcuffs, a section of rope, and a laptop computer. In his computer, they found titles of books he had sent himself that included, "Kill Without Joy, the Complete How to Kill Book." Following a two-week trial in September 2012, the jury convicted Daker of the malice murder, felony murder, false imprisonment, and aggravated assault of Karmen Smith, the aggravated battery of Nick Smith, the criminal attempt to commit aggravated stalking of Loretta Spencer Blatz, and burglary. At his trial, Daker, 35, representing himself after firing his court-appointed attorney, cross-examined both Blatz and Jack Smith, by then 22. The judge sentenced Daker to life plus 47 years in prison. Daker then appealed to the Georgia Supreme Court.

In today's opinion, the high court states that its Rule 20, which imposes a 50-page limit on the brief of anyone appealing in a non-death penalty criminal case, is not unconstitutional and is designed to "aid parties in presenting their arguments in a manner most likely to be fully and efficiently comprehended by this Court." "Contrary to Daker's arguments, due process and equal protection do not require this Court to allow him to file a brief of any length he wishes," the opinion says. "Here, Daker has been given a full opportunity to be heard in a manner that allows his claims to be fairly and efficiently considered. As such, he has not been denied due process. Likewise, the page limits imposed upon Daker are the same limits imposed on all criminal appellants who bring an action to this Court, and there is no equal protection violation in which similar classes are treated similarly."

As to Daker's argument that the trial judge, Cobb County Superior Court Judge Mary Staley, should have recused herself and erred by denying two of his many recusal motions, the Supreme Court concludes that both of these motions were properly deemed "legally insufficient."

"Judgments affirmed," the opinion concludes. "All the Justices concur."

**Attorney for Appellant (Daker):** Waseem Daker, pro se

**Attorneys for Appellee (State):** D. Victor Reynolds, District Attorney, Jesse Evans, Dep. Chief Asst. D.A., Michael Carlson, Dep. Chief Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

### **BAILEY V. THE STATE (S16A1034)**

The Georgia Supreme Court has also upheld the convictions and life-plus-25-year prison sentence Garrett Lee Bailey received in **Wayne County** for physically abusing and killing his girlfriend's 16-month-old son.

Bailey appealed, arguing that the evidence against him was insufficient to prove his guilt. But in today's unanimous opinion, **Presiding Justice P. Harris Hines** writes that the high court disagrees, finding that the "evidence authorized the jury to find Bailey guilty beyond a reasonable doubt of the crimes for which he was convicted."

According to the evidence at trial, on July 21, 2006, Andria Oder (formerly Andria Lusher) and her boyfriend, Bailey, rushed her 16-month-old son, James Lusher, to the emergency room of Wayne Memorial Hospital in Jesup, GA. Medical staff found the baby in critical condition, with labored breathing and an abnormal motor response. The emergency room physician on duty determined his condition was rapidly deteriorating and the baby was transferred by helicopter to Memorial Health University Medical Center in Savannah where more advanced care was available. Doctors there determined the baby had suffered a massive head injury and observed multiple bruises and retinal hemorrhages in his eyes that indicated he'd been the victim of an inflicted traumatic brain injury or an acceleration/deceleration injury, generally called Shaken Baby Syndrome. They determined that by the time James arrived at their hospital, he was already brain dead, and on July 23, 2006, he was pronounced dead. Dr. Donna Evans recommended a full investigation by the Jesup Police Department and the Wayne County Department of Family and Children Services to determine what had actually happened to James because his injuries did not fit the version of events she'd been given by the baby's mother.

Initially, both Oder and Bailey told investigators they had been outside the Wild Ridge Apartments where Oder lived when James fell off a toy slide and landed head-first on the concrete. He appeared fine and hardly cried. The three then went to Zaxby's restaurant for lunch where, according to Bailey's written statement, the baby "was all good pointing at stuff and he ate all his food like he always does." Bailey stated that after they returned from lunch, Oder left to go to work around 1:30, leaving James with him. He said the baby went to sleep around 2, and that when he awoke, Bailey and the baby went to a nearby park where James "acted normal." Bailey said in his statement that when Oder returned from work at about 5:00, James "threw up, and it was like he had fainted." Oder's initial written statement was similar to Bailey's. She said the day James was injured, the couple had gone out to smoke at her apartment building and "the baby stood up on his slide as always," and "lost his balance and fell onto the concrete, hitting his head." But he cried less than a minute and quickly resumed playing, according to Oder.

Later, however, Oder admitted that she had lied to police and that she had not been present when her baby was injured. Rather she had left for work at 8 that morning and Bailey later told her that's what had happened. She said she believed him and told this account to police because she was afraid of being accused of negligence, of losing custody of James, and of angering the parents of the baby's father for leaving him in her boyfriend's care. Oder had begun dating Bailey in May 2006 shortly after the baby's father broke up with her. Oder also said she had not been present when three weeks earlier while in Bailey's care, James had gotten up on a

chair, according to Bailey, crawled onto a counter, and fallen onto the floor, hitting and bruising his head.

The baby's paternal grandmother, Cheryl Mainor, had seen James shortly after he'd been in Bailey's care, was concerned by the bruises she observed, and took photos of them. She later testified that after babysitting James in July, when she returned him to his mother's apartment the day before he was killed, the baby began to scream and cry.

In May 2007, Andria Oder and Garrett Bailey were formerly charged with the malice murder of James Lusher, felony murder while in the commission of cruelty to children, cruelty to children and making false statements to law enforcement officers. In August 2007, Oder pleaded guilty to making false statements to law enforcement officers and was sentenced to five years in prison. Bailey's first trial ended in a mistrial. But in a second trial, in February 2010, the jury found Bailey guilty of all charges and he was sentenced to life plus 25 years in prison.

In his appeal to this Court, in addition to challenging the sufficiency of the evidence of his guilt, Bailey argued that the trial court erred by admitting what he alleged was illegal hearsay that bolstered Oder's testimony, the State's primary witness against him. He also argued it was wrong to allow the medical examiner to testify that the manner of the baby's death was homicide, thereby improperly testifying about the ultimate issue in the case. But the high court has rejected both arguments as his attorney did not object to the testimony at the earliest possible time and therefore waived the right to bring it up for the first time on appeal. "In any event, the medical examiner's testimony did not speak to the ultimate issue in the case, which was the identity of the person or persons responsible for the fatal abuse of the baby," the opinion concludes. "It was left to the jury to determine whether Bailey inflicted the mortal injuries, which it did."

**Attorney for Appellant (Bailey):** Jonathan Lockwood, Public Defender's Office

**Attorneys for Appellee (State):** Jackie Johnson, District Attorney, Andrew Ekonomou, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.

### **CISNEROS V. THE STATE (S16G0443)**

A young man serving multiple life prison sentences for his role as a teenager in a series of violent **Gwinnett County** home invasions has lost his appeal to the Georgia Supreme Court.

In a unanimous opinion, written by **Chief Justice Hugh Thompson**, the high court has upheld a ruling by the Georgia Court of Appeals and affirmed Gustavo Cisneros' convictions for armed robbery, burglary, aggravated sexual battery and sexual battery. Cisneros, who was about 18 years old at the time of the crimes, was sentenced to six life prison sentences plus 211 years.

In this high-profile case, Cisneros and eight others were indicted for the crimes following a series of "markedly similar" home invasions committed by men the State claimed were members of a Latino gang. According to prosecutors, between February and April 2004, a number of Gwinnett County homes were broken into by masked gunmen who tied up their victims with string and shoelaces and stole money, gold jewelry, stereo equipment and other property. At times, witnesses described "four or five" men – sometimes fewer, sometimes more – who largely spoke Spanish. In some cases, victims had a gun held to their heads. Witnesses said the men were armed with semiautomatic pistols and one victim was shot in the leg; another was hit in her head with a gun; and one man, who tried to snatch the intruder's weapon, was shot

five times. In two cases, one of the men penetrated female victims' vaginas with his hand. In another home, they threatened to kill a woman's children if she did not give them money before one of the intruders pulled down the woman's panties and touched her breasts, body and legs, then forced her to take them to her sister's house in the same mobile home park community. After entering the sister's home, demanding money and drugs, one of the gunmen tortured the sister's husband by burning his back with a heated knife and threatened to cut off his son's fingers. The man eventually told the gunmen he kept cash hidden in a shoe in the closet. In April 2004, a resident who lived near one of the invasions contacted police about a suspicious car driving repeatedly through the neighborhood. Police arrested the driver for driving without a license. Inside they found a pistol and an uzi-type automatic weapon. After interviewing the man about the series of armed robberies, police set up surveillance at the Willow Trail and Clairmont Springs apartment complexes. Police subsequently arrested Cisneros. Initially Cisneros told police he'd been in Mexico the previous two months, but in a later interview, he acknowledged he had transported people to the "trailer park," although he changed his story to say he had followed people to the trailer park. While executing search warrants at the Willow Trail and Clairmont Springs apartment complexes, law enforcement officers found electronic equipment, clothing, ski masks, guns, jewelry, and cash.

In 2008, Cisneros was the first of the men to go to trial. While the jury acquitted him on some counts, it convicted him of 19 offenses associated with seven separate home invasions. At his trial, two of Cisneros' co-defendants testified for the State, saying that he was sometimes present at the home invasions and sometimes served as driver, as well as lookout. One of the co-defendants testified that he and the other men were members of a gang, called the "PL-14," and that Cisneros, as an older gang member, was authorized to give orders to other members. Cisneros appealed the trial court's ruling, and in a lengthy opinion, the Court of Appeals reversed eight of Cisneros' convictions that arose from three of the home invasions, finding there was no direct evidence he was involved in those invasions and the circumstantial evidence was insufficient to allow a jury to conclude beyond a reasonable doubt that Cisneros was guilty of the crimes that occurred in those invasions. But the appellate court disagreed with Cisneros' argument that the evidence was insufficient to convict him of counts 7-to-10 for burglary and armed robbery, which arose from two other home invasions on Glenwhite Drive and Sandune Drive. It upheld those convictions, pointing to an accomplice's testimony that Cisneros was involved specifically in those two invasions and to independent evidence showing that Cisneros had participated in at least some of the other home invasions, which employed the same "modus operandi" (i.e. manner of operating, or "m.o.") as the invasions underlying counts 7-to-10. The Court of Appeals ruled that even though "modus operandi" evidence *alone* would not be sufficient to support Cisneros' convictions, it was sufficient to corroborate the accomplice's testimony. Cisneros then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals correctly concluded that modus operandi evidence was sufficient to corroborate an accomplice's testimony; that the evidence was sufficient to sustain Cisneros' conviction as a party to the crime of sexual battery; and that his constitutional right was not violated by his trial attorney's failure to challenge the quality of the performance by the courtroom interpreter.

In today's 26-page opinion, "we affirm the decision of the Court of Appeals."

Under Georgia law, a defendant may not be convicted of a felony based solely on the testimony of an accomplice. Therefore, to sustain Cisneros' convictions for the armed robberies and burglaries that occurred at the Glenwhite Drive and Sandune Drive homes, the State had to provide evidence of facts or circumstances that corroborated the accomplice's testimony.

"Slight evidence of corroboration is all that is needed to support a guilty verdict, and 'the necessary corroboration may consist entirely of circumstantial evidence, and evidence of the defendant's conduct before and after the crime was committed may give rise to an inference that he participated in the crime,'" the opinion says. "We conclude the modus operandi evidence in this case was sufficient to corroborate [the accomplice's] testimony identifying [Cisneros] as a participant in the Glenwhite Drive and Sandune Drive crimes," the opinion says.

The high court also rejects Cisneros' argument that the evidence was insufficient to convict him of sexual battery as a party to the crime because there was no evidence showing he knew such a crime would occur or that he intentionally aided and abetted any part of that crime.

However, the opinion concludes, the jury was authorized to find that Cisneros "knew his co-conspirators intended to commit a brutal home invasion at the Skyview Lane residence where they likely would use threats, intimidation, and physical coercion." And "we find the evidence was sufficient to authorize the jury to find appellant guilty of sexual battery as a party to the crime."

Finally, the evidence was insufficient to satisfy Cisneros' burden of showing that the Spanish interpretation was so inadequate that he was denied a fundamentally fair trial. The nuances in interpretation identified by Cisneros did not prevent him from effectively presenting his defense and did not alter the meaning of a witness's testimony. "The record demonstrates that appellant [i.e. Cisneros] spoke English and had no difficulty communicating in English with his counsel both prior to and during trial," the opinion says. In addition, "we find it significant, in light of the fact that the evidence shows he spoke both Spanish and English, that he himself made no objection to the adequacy of the interpretation."

"We conclude, therefore, after carefully reviewing the record and considering the full context of the challenged translations, that appellant has failed to demonstrate how the interpreter's interpretation rendered his trial fundamentally unfair."

**Attorneys for Appellant (Cisneros):** Mark Yurachek, Bruce Harvey

**Attorneys for Appellee (State):** Daniel Porter, District Attorney, Lisa Jones, Dep. Chief Asst. D.A., Christopher Quinn, Asst. D.A.

### **WILLIAMS V. THE STATE (S16A1116)**

A young man convicted of murder in **Richmond County** and sentenced to life in prison with no chance of parole has won the right to a new trial in a decision today by the Georgia Supreme Court.

In March 2012, the jury found Erik Albert Williams, Jr., guilty of shooting and killing 24-year-old DeAngelo Hudgins. But in today's unanimous decision, written by **Justice Robert Benham**, the state Supreme Court has reversed Williams' convictions, concluding that the trial court improperly allowed state prosecutors to admit evidence of a prior conviction.

According to the evidence at trial, on the night of July 18, 2010, Hudgins got into an altercation with a young woman following a night of partying and drinking. When the young woman's brother, Tony Davis, heard Hudgins had choked his sister, Davis confronted Hudgins

and the two got into a shoving match. Hudgins left, but later returned to Davis's apartment with his friend, Albert Gilbert, whom Hudgins had called for assistance. Hudgins and Gilbert had served in the Middle East together as military policemen. When Hudgins and Gilbert arrived at the complex, they banged on Davis's door, but got no response. Davis meanwhile called his friend, Erik Albert Williams, Jr., told him about his earlier run-in with Hudgins, and asked him to come over. Williams, who was about 21 years old at the time, got a ride to Davis's apartment complex from Edwin Cruz, his sister's boyfriend. After getting no response from Davis, Hudgins and Gilbert returned to Gilbert's car, but by then, Cruz and Williams had arrived and maneuvered their car to block them. Williams, who was sitting in the passenger's side of the car, later testified that he did not know Hudgins and Gilbert, who were shouting and moving aggressively toward Cruz's car, asking who they were and what they wanted. When Hudgins bent down to talk to Williams, Williams yelled and fired two shots before Cruz and Williams drove away. Gilbert was shot once, fracturing his hip. Hudgins, who was shot in the abdomen, later died. A few weeks after the shooting, Williams contacted his parole officer and surrendered to police. He at first denied any involvement in the shooting during an interview by investigators with the Richmond County Sheriff's Office, but he later admitted it was he who had shot Hudgins and Gilbert.

A grand jury jointly charged Williams and Cruz with the malice murder and felony murder of Hudgins, the aggravated assault of Gilbert, and gun charges. The two were tried separately, and during his trial, Williams took the stand and stated he had fired his weapon after Hudgins leaned into his car window and reached behind his back, leading Williams to believe he was reaching for a gun. He said he fired his gun because he felt threatened and was nervous and scared of Hudgins and Gilbert, two unknown men, who were much bigger than he was. The jury convicted Williams of all charges but one of the gun charges and he was sentenced to life without parole plus 30 years. Williams then appealed to the state Supreme Court.

In today's opinion, the high court has concluded that the evidence at trial "was legally sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Williams was guilty of the crimes of which he was convicted." However, the judge erred in allowing in evidence that Williams had previously been convicted of making terroristic threats. Under the state law in effect at the time, evidence of prior convictions could be admitted "if the court determines that the probative value of admitting the evidence substantially outweighs its prejudicial effect to the defendant." In other words, it could be admitted if its value in proving or disproving something substantially outweighed the harm it would do to the defendant's case. The State argued that the probative value of the evidence relating to Williams' 2007 conviction for terroristic threats met the law's standard because it would rebut any suggestion that Williams was acting peaceably the night he killed Hudgins. For the same reason, the State argued that evidence of Williams' 2009 conviction for theft by taking was also admissible. Initially, the trial judge ruled it would not allow evidence of either conviction.

Williams then testified in his own defense. During his testimony, he let slip in that he had surrendered to the authorities after contacting his parole officer. By saying that he was on parole, he himself let it be known that he had a past record, and the State immediately argued he had placed his "character in issue," and therefore opened the door for the State to present evidence not only that he was on parole for the theft by taking conviction but also that he had a past conviction for terroristic threats. Williams' attorney argued that Williams' testimony related only

to the theft by taking conviction for which he was on parole. But the trial judge agreed with the State that “the door has been opened” regarding “the parole issue,” and the judge ruled the court would not restrict the State’s cross-examination to include only the offense for which he was on parole. The State proceeded to cross-examine Williams on both previous convictions. At the end of the cross examination, Williams’ attorney renewed his objection that the testimony was not admissible because he did not bring his character into evidence in his testimony.

“As to the evidence relating to the terroristic threats conviction, we agree,” today’s opinion says.

In its 2002 decision in *Morgan v. State*, the Georgia Supreme Court ruled that a defendant’s reference to his parole status does not place his character at issue, but does raise an issue that can be fully explored “with respect to the conviction for which he was on parole,” the opinion says. Therefore, there was no error in allowing the State to cross-examine Williams with respect to his theft by taking offense. But under the law, before the State could question him on the terroristic threats conviction, “the trial court was required to make an on-the-record finding that the probative value of admitting that conviction substantially outweighed the prejudicial effect of its admission,” the opinion says. “The trial transcript shows the court did not make that required finding.”

Therefore, “we find the evidence relating to the terroristic threats conviction was improperly admitted,” the opinion concludes. “Because Williams presented a credible defense, we cannot say the admission was harmless error....Accordingly, Williams is entitled to a new trial.”

**Attorney for Appellant (Williams):** John Kraft

**Attorneys for Appellee (State):** Ashley Wright, District Attorney, Joshua Smith, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Aimee Sobhani, Asst. A.G.

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

\* Octavious Burney (Fulton Co.)

**BURNEY V. THE STATE (S16A1042)**

\* Quentin Cooks (Fulton Co.)

**COOKS V. THE STATE (S16A0719)**

(The Court has upheld Cooks’ murder conviction and life prison sentence. But it is sending the case back to the trial court for resentencing. The trial court neglected to sentence Cooks for possession of a firearm by a convicted felon due to confusion over which crimes should be “vacated” and which crimes should be “merged” into others for sentencing purposes.)

\* Fernando Hernandez (Fulton Co.)

**HERNANDEZ V. THE STATE (S16A0936)**

\* Ernest Airokhai Huff (Gwinnett Co.)

**HUFF V. THE STATE (S16A0996)**

\* Rodney Lane (Fulton Co.)

**LANE V. THE STATE (S16A0721)**

- \* Dijuan Marshall (Fulton Co.)                    **MARSHALL V. THE STATE (S16A1084)**
- \* Dewayne Lebron Reynolds (Floyd Co.)      **REYNOLDS V. THE STATE (S16A0640)**  
 (The Court has upheld Reynolds’ murder conviction and life prison sentence. But it is sending the case back to the trial court for resentencing. The trial court neglected to sentence Reynolds for aggravated assault (with intent to rob) due to its error in “merging” that crime with another.)
- \* Lonnie Ragan (Muscogee Co.)                **RAGAN V. THE STATE (S16A1107)**

**IN DISCIPLINARY MATTERS**, the Georgia Supreme Court has accepted a petition for voluntary discipline and ordered the **indefinite suspension** of attorney:

- \* Michelle Hickerson                    **IN THE MATTER OF: MICHELLE HICKERSON (S16Y1816)**

The Court has ordered the **1-year suspension with conditions** of attorney:

- \* Alvis Melvin Moore                    **IN THE MATTER OF: ALVIS MELVIN MOORE (S16Y1294)**

In a 6-1 decision, the Court for a second time has **rejected a petition for voluntary discipline** (the first time seeking a one-year suspension with conditions, this time seeking a four-year suspension with conditions) as an inadequate sanction from attorney:

- \* Joanna Temple                        **IN THE MATTER OF: JOANNA TEMPLE (S16Y1710)**  
 (Justice Harold Melton dissents, arguing that a four-year suspension is an appropriate sanction because she assisted her clients in committing a misdemeanor, not a felony.)