



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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DANENBERG V. THE STATE (S12A0524)

The Georgia Supreme Court has upheld the murder conviction of a former Atlanta lawyer found guilty of shooting and killing his estranged wife's friend as she held his infant son.

In today's unanimous decision, written by **Justice Robert Benham**, the high court has rejected the defendant's claims that the lower court made numerous errors and found that the "evidence was sufficient to authorize the jury to find appellant guilty beyond a reasonable doubt of the malice murder of Deborah Lamb."

According to the record, in November 1988, Robert Allen Danenberg was a young lawyer working in Atlanta. He and his wife, Lilla "Dale" Danenberg, were in the process of getting divorced, and she and the couple's 5-month-old son had moved in with Carey and Deborah Penland Lamb and their two young sons in rural **Jones County**. Dale was teaching in a Bibb County middle school. On Nov. 13, 1988, Robert traveled to the Lambs' house at his wife's invitation to visit their baby. Robert had been taking Medrol, a metabolic steroid prescribed by a physician following a minor car accident. According to the evidence at trial, Robert parked his car nearby and silently entered the house through the back door. Deborah Lamb and her two sons, 3 and 5, were at home, along with her friend, babysitter, Dale and Dale and Robert's baby. Carey Lamb was at work. Robert acted strange and Dale asked him to leave, and initially he left and began "driving all over the yard." Dale then handed the couple's baby to Deborah Lamb so she could go outside to talk to Robert, who proceeded to kick her in the chest, knock her to the ground and choke her. He then threw Dale into the car, retrieved a .45 caliber gun from the

floorboard and after holding it to her head, went inside and shot Deborah Lamb in the chest as she held the Danenbergs' baby. The Lambs' two little boys were the only witnesses, and their videotaped interview was later shown to the jury. When Dale returned inside, she found Deborah lying face down against the hearth, her baby on the floor and the Lambs' boys hiding under the baby's crib. Dale escaped with the three children. Robert fired two more shots into Deborah Lamb's head, then called 911. When a Deputy arrived at the scene and asked Robert why he had shot Deborah more than once, he responded that she "was crying and whining and he put her out of her misery," according to prosecutors.

The following month, Robert Danenberg was indicted for murder, aggravated assault and kidnapping, and the State announced it would seek the death penalty. In August 1989, Danenberg pleaded guilty to malice murder and aggravated assault in exchange for a sentence of life in prison plus five years. Subsequently, Danenberg filed a petition for a "writ of habeas corpus" – a civil proceeding available to those who have already been convicted that allows them another opportunity to show that their conviction or sentence is unconstitutional. The habeas court ruled in Danenberg's favor, finding that his trial lawyer had provided "ineffective assistance of counsel" by failing to investigate the side effects of Medrol. The habeas court also found his attorney had a conflict of interest because at the time he was representing Danenberg, he was also representing the district attorney in a well-publicized federal challenge to the prosecutor's use of preemptory strikes to remove minorities from juries. In 2005, the state Supreme Court affirmed the lower court's ruling on the issue of the attorney's conflict of interest. The case was set for retrial in 2006, but was postponed when Danenberg was found mentally incompetent to stand trial. A subsequent trial scheduled for May 2008 was continued because the defense was unable to obtain from Central State Hospital Danenberg's psychological records for treatment and evaluation since 1988. In November 2008, the case went to trial on the issue of Danenberg's competency to stand trial and the jury found him competent. Following his murder trial, the jury found Danenberg guilty. He then appealed to the state Supreme Court.

His attorneys argued the trial court made nine errors, including refusing to let Danenberg, a lawyer, represent himself, which is his constitutional right. But Danenberg's request to replace his attorney and possibly proceed pro se, was both equivocal and late in the judicial process, today's opinion says. "Appellant was not wrongfully denied his constitutional right to represent himself." The trial court also did not err in allowing the State to play for the jury the videotapes of the 1988 interviews of the victim's young sons, conducted two days after their mother's murder. As grown men, they testified at Danenberg's 2008 trial, and both could not recall certain details. "A party may introduce a prior consistent statement of a forgetful witness where the witness testifies at trial and is subject to cross-examination," the opinion says, quoting the state Supreme Court's 2001 opinion in *Manning v. State*. One by one, the opinion addresses each of Danenberg's other claims of error, finding merit in none.

Attorneys for Appellant (Danenberg): John Bell, Jr., Robert Cullen

Attorneys for Appellee (State): Samuel Olens, Attorney General, Mary Beth Westmoreland, Dep. A.G., Paula Smith, Sr. Asst. A.G.

DRANE V. THE STATE (S12A0857)

The Georgia Supreme Court has unanimously upheld an **Elbert County** judge's decision denying a man who is facing the death penalty his "extraordinary motion" for a new trial.

Such a motion allows a defendant to challenge his conviction based upon newly discovered evidence.

Leonard Maurice Drane was first convicted and sentenced to death in 1992 for the murder of Renee Blackmon. He filed his extraordinary motion based on the recent admission by his co-defendant, David Robert Willis, that he was the one who committed the murder.

But in today's opinion, written by **Justice Hugh Thompson**, the high court finds Drane failed to exercise "due diligence" in attempting to acquire Willis' testimony in the years following his conviction. And this court has consistently ruled that the "statutes which control extraordinary motions for new trial based on newly discovered evidence require a defendant to act without delay in bringing such a motion."

This is the fourth time this case has been before the Georgia Supreme Court. Twice, this court has remanded the case to lower courts for further proceedings, although it has upheld Drane's convictions and death sentence. In 1995, the Supreme Court summarized the facts of the case, stating that on the evening of June 13, 1990, Drane and his roommate, Willis, "went to a liquor store in Willis's truck. Outside the store they met Blackmon, who asked them for crack cocaine and then agreed to ride in the truck and drink with the two men. Willis drove the truck to a spot near a lake, where he had sex with the victim in the truck while Drane stood in front of the truck. Willis and the victim then walked together to the back of the truck where Willis shot the victim in the head. The bullet blew off part of the victim's skull and detached her brain. Thereafter the victim's throat was slashed at least six times. There is contradictory evidence whether Drane or Willis slashed her throat and whether she was still breathing at the time. After the murder, Drane assisted Willis in concealing the evidence and in disposing of the body. Drane continued to live with Willis for a few weeks until the two were arrested."

According to the State, on the night of the murder, Willis told Drane he had shot Blackmon because he had sex with her and the "niggers" in town would find out and come after him. Blackmon was black; Drane and Willis are white. After the murder, Drane and Willis drove to the Georgia/South Carolina line on Highway 368 and pushed her body off a bridge into the water. Blackmon's body was found weeks later in Lake Russell. Both men were convicted of murder, but while Willis was sentenced to life in prison, Drane was sentenced to death.

On July 21, 2010, a Georgia parole officer interviewed Willis and subsequently wrote a memorandum stating that Willis said that "Drane did not play an active part in assaulting or killing the victim." When the state Attorney General's office informed Drane's attorney about the statement, he filed an "Extraordinary Motion for New Trial," arguing he had new evidence of Drane's innocence. In a signed affidavit, Willis said he tried to render the victim's body unidentifiable by removing the head and hands but got sick before he could remove her head. In June 2011, Willis testified at a hearing on the motion that "he was the one that shot Ms. Blackmon and cut her throat and that Defendant Drane only assisted in disposing of the body." However, he also said that after he had sex with Blackmon, Drane took the unclothed victim some 50 yards away from the truck for 5 to 10 minutes. The trial court denied Drane's motion, and he applied for permission to appeal to the state Supreme Court, which granted his request.

In its 1980 decision in *Timberlake v. State*, the Georgia Supreme Court ruled that an extraordinary motion for a new trial may be granted only if the defendant is able to show: “(1) that the evidence has come to his knowledge since the trial; (2) that it was not owing to the want of due diligence that he did not acquire it sooner; (3) that it is so material that it would probably produce a different verdict; (4) that it is not cumulative only; (5) that the affidavit of the witness himself should be procured or its absence accounted for; and (6) that a new trial will not be granted if the only effect of the evidence will be to impeach the credit of a witness.”

“We have emphasized that ‘[a]ll six requirements must be complied with to secure a new trial’ and that the ‘[f]ailure to show one requirement is sufficient to deny a motion for a new trial,’” today’s opinion says. In this case, “we conclude that Drane’s extraordinary motion for a new trial must fail in light of his failure to satisfy at least two of the *Timberlake* requirements bearing upon the jury’s verdict of guilt and at least one of the *Timberlake* requirements bearing upon the jury’s sentencing verdict.”

The trial court concluded that Drane failed to satisfy the requirement that the new evidence probably would have produced a different verdict had it been presented at trial. According to testimony at trial, Drane “had admitted to various persons that he had either cut Ms. Blackmon’s throat or had shot her and cut her throat,” the opinion says. “In one such admission, he also stated that he had such violent sex with Ms. Blackmon that she never again would have been able to have babies and that the ride Ms. Blackmon took with him and Willis was the last ride she would ever take.” Another witness testified “Drane had stated that he cut Ms. Blackmon’s throat with a knife that Willis handed to him after Willis shot her.”

“Particularly in light of the discretion afforded to the trial court in its assessment of Drane’s new testimony from Willis, which the trial court observed live in the courtroom, we conclude that the trial court did not abuse its discretion in finding that Willis’ testimony at the hearing would not have probably produced a different result in the guilt-innocence phase if it had been presented at Drane’s trial,” the opinion says.

During the sentencing phase of Drane’s trial, the evidence included that on the night of the murder, Drane struck an African-American man who asked him for a beer, based on his race. He also forced oral sex on a woman at knifepoint the same night of the murder – a woman he had allegedly also raped. A jail mate of both Drane and Willis testified that Willis had stated he had both shot a woman and cut her throat. Today’s opinion says “the trial court would not have abused its discretion” if it had found that Willis’ testimony probably would not have changed the sentencing verdict had it been presented at Drane’s trial. But the trial court’s order suggests it believed it lacked the authority to grant a new trial solely on the question of Drane’s sentence. To the extent it believed that, “it erred,” the opinion says. Given Drane’s failure to meet the second of the *Timberlake* requirements regarding due diligence, however, there was no need to remand the case to the trial court to clarify whether Willis’ more recent testimony would have changed the jury’s original sentencing verdict.

Drane presented evidence that he diligently sought Willis’ testimony at the time of his trial, but Willis’ attorney would not permit him to testify as Willis was still facing trial and a potential death sentence himself. “This excuse was eliminated a year after Drane’s trial, however, when Willis was convicted and received a life sentence,” today’s opinion says. “Drane has shown absolutely nothing to demonstrate that he took diligent steps to ascertain what

testimony Willis might have been willing to give during the more than 17 years since Willis' trial."

Attorneys for Appellant (Drane): Edward Tolley, Ronald Houser

Attorneys for Appellee (State): Kenneth Mauldin, District Attorney, David Lock, Asst. D.A., James Chafin, Asst. D.A., Samuel Olens, Attorney General, Mary Beth Westmoreland, Dep. A.G., Beth Burton, Sr. Asst. A.G., Richard Tangum, Asst. A.G.

WHITE V. STATE FARM FIRE AND CASUALTY CO. (S12Q0631)

A man who sued his insurance company after it refused to provide coverage following a burglary of his home failed to file his lawsuit within the one-year statute of limitation required by his policy, the Supreme Court of Georgia has ruled.

In today's unanimous decision, **Justice Harold Melton** writes that Georgia's Insurance Commissioner exceeded his legal authority when he put into effect a regulation that extends coverage for theft-related property damage to the two-year limitation that applies to coverage for fire-related damage.

"While the Legislature has granted the Commissioner the authority to promulgate rules and regulations that are reasonably necessary to *implement* and *enforce* the insurance code, the Commissioner does not have authority to contravene or rewrite the insurance code," the opinion states.

The case involves Ricardo White, who had a homeowner's insurance policy with State Farm Fire and Casualty Co. that included coverage for loss or damage caused by both fire and theft. The policy stated that any lawsuit against State Farm must be brought "within one year of the date of loss or damage." After White's home was burglarized in January 2008, White filed a claim for loss of more than \$135,000 in personal property. State Farm denied the claim based on its determination that White had misrepresented information he'd provided in his claim. In June 2009 – more than one year after the date of his loss – White sued State Farm, alleging breach of contract, bad faith and fraud. State Farm moved the case to federal court and filed a motion for "summary judgment," arguing in part that White's claims were barred by the policy's one-year limitation period. (A court grants summary judgment when it determines a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.) White responded that the policy's one-year limitation period violated Georgia law, basing his argument on a 2006 insurance regulation that stated: "No property... insurance policy providing first party insurance coverage for loss or damage to any type of real or personal property shall contain a contractual limitation requiring commencement of a suit or action within a specified period of time less favorable to the insured than that specified in the 'Standard Fire Policy' promulgated by the Commissioner...." The Standard Fire Policy states that any lawsuit for recovery of a claim must be started within *two* years of the date of the loss. In its reply, State Farm argued that under Georgia's constitution, the Insurance Commissioner lacked the authority to publish the rule and therefore it could not be enforced.

The U.S. District Court ruled in favor of State Farm, finding that the insurance policy was valid and White failed to file his suit within the one-year time frame. On appeal, the U.S. Court of Appeals for the 11th Circuit has asked the Georgia Supreme Court to answer two questions about Georgia law before it decides the case: whether the Insurance Commissioner exceeded his authority by publishing a rule requiring that coverage for theft-related property damage conform

with the two-year limitation period provided for in Georgia's Standard Fire Policy, and whether White's action is barred by the policy's one-year limitation.

In today's opinion, "we find that: (1) the Georgia Insurance Commissioner did not act within his legal authority and (2) this action is barred by the one-year limitation period in his insurance policy."

The effect of the Insurance Commissioner's rule is that all property loss coverage, whether the loss is caused by fire or something else, must conform to the requirements of the Standard Fire Policy. Official Code of Georgia § 33-32-1, however, "indicates that the required terms of the Standard fire Policy, which would include the two-year statute of limitations, must be incorporated *only* into the fire coverage provisions of a multiple line policy," the opinion says. Therefore, the Commissioner exceeded his legal authority when he promulgated a rule requiring that an insurance policy providing coverage for theft-related property damage "must be reformed to conform with the two-year limitations period provided for in Georgia's Standard Fire Policy." As a result, the one-year time limit in White's policy is enforceable and White's claim is barred "because he failed to initiate that claim within the policy's one-year statute of limitations provision," the opinion says.

Attorney for Appellant (White): Donald Ellis

Attorneys for Appellee (State Farm): John Campbell, Pamela Lee

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

* Sam Green (Chatham Co.)

GREEN V. THE STATE (S12A0853)

* Paul Mathis (Fulton Co.)

MATHIS V. THE STATE (S12A0126)

* Willie Henry Lewis (Fulton Co.)

LEWIS V. THE STATE (S12A0400)

(While the Court has upheld Lewis' murder conviction and life prison sentence, it has thrown out the sentence for one of his weapons charges and remanded the case for resentencing. It has also ordered the trial court to hold a hearing on whether Lewis' first attorney in his appeal was ineffective.)

IN DISCIPLINARY MATTERS, the Supreme Court has **disbarred** the following attorney:

* Adrienne Regina McFall

IN THE MATTER OF: ADRIENNE REGINA MCFALL (S12Y1134)

The Court has ordered the **18-month suspension with conditions** of attorney:

* Lisa M. Cummings

IN THE MATTER OF: LISA M. CUMMINGS (S12Y0468)