Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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WILLIAMS V. THE STATE (S12A0594)

A young man who was 20 years old when he shot and killed a restaurant owner during an attempted armed robbery has lost his appeal to the state Supreme Court. Michael Eugene Williams argued his sentence of life in prison with no chance of parole constituted "cruel and unusual punishment" under the Georgia and U.S. Constitutions.

"While the Supreme Court of the United States has recently held that juvenile offenders cannot be sentenced to life without parole for the commission of non-homicide crimes, *Graham v. Florida*…(2010), that rule does not apply in this case because appellant was over the age of 18 when he committed the crime and because he committed a homicide," **Justice Robert Benham** writes in today's unanimous decision.

According to the evidence at trial, Jone Cheung, owner of The House of Cheung King of Wings in **Richmond County**, was preparing to close the night of May 30, 2009, when Williams and a co-defendant entered the restaurant to determine how many people were there. After deciding it was nearly empty, Williams went back into the restaurant with a woman who was also a co-defendant. Williams went into the bathroom to put on a mask, a black skull cap and a green bandana. According to prosecutors, the woman approached Cheung with a dollar to purchase a cup of tea. Williams came out of the bathroom, jumped across the counter and demanded money. He then pointed a gun at Cheung's face and shot him between the eyes, instantly killing him.

Williams turned himself in within 24 hours and confessed to investigators with the Richmond County Sheriff's Office that he had killed Cheung. He was indicted for malice murder, felony murder and possession of a firearm during the commission of a crime.

In Georgia, prior to April 29, 2009, the state could only seek the death penalty or life in prison with the possibility of parole for a person convicted of murder. The state could only impose life without parole in cases where it had first sought the death penalty, which requires proving the presence of an aggravating circumstance. In 2009, however, the Georgia General Assembly amended Official Code of Georgia § 16-5-1 to add the sentence of life without the possibility of parole as a punishment for murder, without first requiring the state to seek the death penalty and prove the presence of an aggravating circumstance.

In October 2010, Williams' attorney filed a motion asking the trial court to declare § 16-5-1 unconstitutional. The court denied the motion. On Jan. 4, 2011, Williams pleaded guilty to all crimes charged. At a sentencing hearing, the defense presented testimony from a social worker who was an expert on trauma. She testified that Williams had a history of abuse and childhood trauma that had been left largely untreated, and which likely factored into him panicking during the robbery attempt and shooting the victim. The state introduced into evidence Williams' juvenile record. Prior to imposing the sentence, the judge acknowledged to Williams that the expert's testimony was "very convincing with regard to the fact that you probably suffer from post traumatic stress disorder or syndrome," according to briefs filed in the case. The judge also allowed in statements from the victim's widow and daughter about their loss before imposing a sentence of life without parole plus five years for the firearm charge.

On appeal, Williams' attorneys argued that the Georgia statute is unconstitutionally vague and lacks any standards to guide judges on when to impose life without parole. They also argued that the imposition of the sentence on an "emotionally immature 20-year-old adolescent" constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the U.S. Constitution.

"We disagree," today's opinion says. "Traditionally, it is the task of the legislature, not the courts, to define crimes and set the range of sentences….The Supreme Court of the United States has determined that, outside the context of a death penalty case, there is no constitutional requirement for an individualized determination that a criminal punishment is appropriate."

"[T]he argument that appellant's sentencing lacked the trappings of constitutional due process, under either the state or federal constitutions, is unavailing," the opinion says. "The trial court did not violate appellant's due process rights by sentencing him to life without parole."

Furthermore, the sentence does not constitute cruel and unusual punishment. "There is no state or federal constitutional prohibition against sentencing an adult, albeit a young adult, to a term of life in prison without parole for the commission of a homicide," the opinion says.

Attorneys for Appellant (Williams): Katherine Mason, Circuit Public Defender, Joshua Smith, Asst. Public Defender

Attorneys for Appellee (State): R. Ashley Wright, District Attorney, Charles Sheppard, Samuel Olens, Attorney General, Mary Beth Westmoreland, Dep. A.G., Paula Smith, Sr. Asst. A.G., Brittany Jones, Asst. A.G.

BROWN V. THE STATE (S11G1082)

The Supreme Court of Georgia has upheld a decision by the Georgia Court of appeals and ruled against a young man who had argued that when his case goes to trial, the jury should not hear about his confession to police that he sexually molested a 4-year-old boy.

At issue in this case is whether the officers' promise that the young man could go home after questioning amounted to an improper "hope of benefit" that would render his confession inadmissible at trial.

"We hold that the answer is no, as long as the officers' statements do not amount to a promise that the suspect will never be charged or will face reduced charges or a reduced sentence based on what he tells the officers during the interview," **Justice David Nahmias** writes in today's opinion. In this case, the young man "could not reasonably have construed the officers' statements as such a promise."

According to the state's case, Harrison R. Brown lived in his family's home in **Effingham County** with his brother, his brother's girlfriend, and her 4-year-old son, J.L. The child's grandmother contacted authorities after J.L. told her that Brown, then 19 years old, had "sucked on his wee-wee." In April 2009, the Effingham County Sheriff's Department asked Brown to come in for questioning regarding the child's allegations. Sergeant Don White and Detective John Bradley conducted the interview, which was videotaped. The investigators told Brown he could leave any time he wanted. Brown, a high school graduate, expressed his general familiarity with criminal procedure, informing the officers that he had taken criminal justice classes in school. At some point, Brown asked, "if I did this, what all would be done?" White replied he did not know because he was not a judge. White then said, "What I can tell you is that when you leave here, no matter what you tell me or say, you're going home." The officer continued, "If you tell me what happened, I'm not going to snatch you up, place you in handcuffs and drag you back there in the back….You're going to go home tonight." Brown initially denied he'd done what the child alleged. However, eventually Brown admitted he had touched the child's penis and put it in his mouth. Upon that admission, the investigators stopped the interview, told Brown he would no longer be able to leave, and read him his *Miranda* rights. After waiving his rights, Brown continued trying to discuss the incident, repeating his earlier admission, and later making further incriminating statements to another investigator.

Brown was indicted for aggravated sodomy, aggravated child molestation, child molestation and felony sexual battery. Prior to trial, Brown's attorney filed a motion to exclude his statements, arguing that due to the investigators' promises, Brown's confession was involuntary and therefore inadmissible under Official Code of Georgia § 24-3-50, which states: "To make a confession admissible it must have been made voluntarily, without being induced by the slightest hope of benefit or remotest fear of injury." The trial court granted Brown's motion, ruling that "Det. Bradley's and Sgt. White's repeated statement to Defendant that he would be going home no matter what he told them negated the prior statement by Sgt. White that he could not tell defendant what the judge would do." The officers' statements, the trial court ruled, amounted to an "implied promise" that Brown would face no criminal charges even if he admitted to the child's allegations. The State appealed, and the Court of Appeals reversed the lower court's ruling, finding that "hope of benefit" generally refers to a lighter sentence and the officers did not suggest Brown would *never* be arrested or charged.

In today's opinion, the high court agrees, stating that "this Court consistently and for many decades has interpreted the phrase 'slightest hope of benefit'…to focus on promises related to reduced criminal punishment – a shorter sentence, lesser charges, or no charges at all."

It is true that a promise to a suspect that he can go home after police questioning could fall within the common understanding of "slightest hope of benefit" used in § 24-3-50, the opinion states. But the words must be read in context which includes the statute that follows, and that statute says: "The fact that a confession has been made under a spiritual exhortation, a promise of secrecy, or a promise of collateral benefit shall not exclude it."

"This context makes it clear that § 24-3-50 does not encompass every conceivable benefit that the police may offer a suspect in an effort to induce him to confess," the opinion says. "A promise not relating to charges or sentences, including a promise regarding release after questioning, has been held to constitute only a 'collateral benefit,' as that phrase is used in § 24-3-51, and even if it induces a confession, it does not require the automatic exclusion of that evidence."

Here, "[t]he officers never said or implied to Appellant that if he confessed what he had done to the child, no criminal charges would ever be filed against him, nor did they promise him reduced punishment," the opinion says. "To the contrary, there were several references to potential criminal sanctions, and Appellant acknowledged that there should be criminal consequences if he had in fact molested the child."

The officers' statements to Brown "clearly referred to what would supposedly happen to him after the interview that day, not what might happen to Appellant later on; they therefore offered at most a collateral benefit."

Attorneys for Appellant (Brown): G. Terry Jackson, Steven Sparger
Attorneys for Appellee (State): Richard Mallard, District Attorney, Brian Deal, Asst. D.A.

MCNAUGHTON V. THE STATE (S12A0322)

The Georgia Supreme Court has upheld the convictions and life prison sentence a man received for the murder of his wife.

Alec Bryant McNaughton, an attorney, appealed to the state Supreme Court, arguing the **Coweta County** trial court erred by allowing in testimony from his three former wives who provided "similar transaction evidence" of McNaughton's violence. McNaughton also argued the court was wrong to permit testimony about statements his wife, Catherine Lorraine McNaughton, made prior to her death, including that she feared her husband would kill her and she planned to divorce him.

But in today's opinion, the high court finds no error. "Based on the evidence establishing the similarity between the crimes charged and the violent acts perpetrated by appellant against his former spouses, we find no abuse of the trial court's discretion by admitting evidence of these similar transactions," **Justice Hugh Thompson** writes. And the hearsay testimony McNaughton challenged "was either admissible under the necessity exception to the hearsay rule, or its admission constituted harmless error."

According to the evidence at trial, on Feb. 15, 2009 at around 7:30 p.m., McNaughton called 911, saying he'd found his wife on the floor of her office in their home on Portage Lane. He said she had "blood all over her" and was not breathing. When police arrived, McNaughton was sitting on the floor next to his wife's body with tears in his eyes. McNaughton told them he

was an attorney. According to the autopsy, "Cathy" McNaughton had been stabbed 31 times apparently while seated at her desk. Rigor mortis and lividity had set in, and it appeared she had been dead for some time. McNaughton told the officer that the last time he'd spoken to his wife was around 11 that morning when he left to meet his mother for lunch at Fat Matt's Barbecue in Atlanta. He said he and his wife had no problems in their marriage and were planning on having a Valentine's Day dinner that evening. But when he tried calling her at 6:30 p.m. to say he was on his way from his mother's house in Sandy Springs, no one answered. Police found no signs of forced entry or any evidence consistent with a burglary. They did find a spray bottle of bleach in the bathroom, which a GBI forensic examiner later testified is commonly used to clean up blood.

McNaughton was arrested and charged with murder and aggravated assault under the Family Violence Act. At an August 2010 trial, the judge permitted McNaughton's three former wives to testify as "similar transaction" witnesses. His first wife testified that after they separated, McNaughton beat her with a coke bottle when she refused to have sex, breaking her nose and giving her a black eye. His second wife testified that after the couple broke up, he asked to get into the house one last time to be sure he'd gotten all his possessions. When she refused, she said he grabbed her and threw her into a glass-topped dining table that fell over, bruising her and putting her in shock. His third wife, to whom he was married for 22 years and with whom he had two daughters and shared a law practice, testified that after the couple separated, he became angry over their daughter's cell phone bill and came over to his wife's house. Following a lengthy emotional discussion, everyone went to bed, but in the middle of the night, the wife found him in the den loading a shotgun. He said he was going to kill her, their daughter and himself. She eventually talked him into taking the shells out of the shotgun, and he promised to see his psychiatrist. The State also presented testimony from a man who had been in the Coweta County Jail with McNaughton and testified McNaughton had tried to stab him in the neck with a pencil. The State further presented testimony from a number of witnesses who said Cathy McNaughton had told them of incidents of domestic violence and her intention to leave Alec. Among the witnesses were Cathy's two daughters and sister, her friend and hair stylist, a co-worker and a supervisor from Delta, McNaughton's sister and a mental health nurse and counselor who treated Cathy during an emergency visit and photographed Cathy's injuries. Following the 8-day trial, the jury found McNaughton guilty of all charges and he was sentenced to life plus 20 years in prison.

"Construed in the light most favorable to the verdicts, we find the evidence was sufficient to enable a rational trier of fact to find appellant guilty beyond a reasonable doubt of the crimes for which he was convicted," today's opinion says.

The testimony of each of the former wives "involved unprovoked acts of violence by appellant against his spouse during times of marital difficulty and at times when the women sought to separate or divorce." Furthermore, "in cases of domestic violence, prior incidents of abuse against family members or sexual partners are more generally permitted because there is a logical connection between violent acts against different persons with whom the accused had a similar emotional or intimate attachment," the opinion says, quoting the state Supreme Court's 2010 decision in *Hall v. State.*

Attorney for Appellant (McNaughton): Jennifer Trieshmann

Attorneys for Appellee (State): Peter Skandalakis, District Attorney, Kevin McMurry, Asst. D.A., Samuel Olens, Attorney General, Mary Beth Westmoreland, Dep. A.G., Paula Smith, Sr. Asst. A.G., Sara Sahni, Asst. A.G.

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OTHER CASES APPEALED FROM THE GEORGIA COURT OF APPEALS

CRISLER ET AL. V. HAUGABOOK ET AL. (S11G0907)

The Supreme Court of Georgia has upheld a decision by the Georgia Court of Appeals and ruled against three brothers in a lawsuit stemming from the hit-and-run death of their mother.

As a result of today's unanimous ruling, written by **Justice Hugh Thompson**, the brothers must pay more than $200,000 in interest on top of the $1 million judgment against them, even though the opposing party did not request the interest in his original complaint.

This **Clarke County** case has been to the Court of Appeals twice before. According to briefs that were filed, in 2004, the mother of three brothers – Geoffrey, Christopher and Timothy Scott Crisler – was killed in a hit-and-run accident. The sons hired an attorney and filed a wrongful death suit. Eventually the attorney paid the Crislers $1 million as the purported settlement. In actuality, however, there had been no settlement. Rather the attorney had defrauded his father-in-law – Richard Haugabook – into loaning him $1 million, which he used in a check-kiting scheme to cover the $1 million wire transfer to the Crislers, according to the briefs. When the scheme was discovered, Haugabook demanded the $1 million back, but the Crislers refused to return it. In December 2006, Haugabook sued the Crislers asserting several claims, including unjust enrichment and "money had and received," which required Haugabook to show that the money given to the Crislers actually belonged to him. The trial court ruled in favor of the Crislers, but the Court of Appeals reversed the ruling, finding that the Crislers had "received $1 million to which they were not entitled" and the money was "in essence the proceeds of a crime." The $1 million amount was not disputed between the parties and therefore was considered a "liquidated amount."

In November, the trial court entered a judgment in favor of Haugabook, as it had been directed to do. (Haugabook died during the first appeal and the executives of his estate – Janice Haugabook, Gail Haugabook Coogle and Richard Haugabook, Jr. – were substituted as parties.) In December 2009, the Haugabooks amended the complaint and requested "prejudgment interest" in addition to the $1 million – or interest on the $1 million that began accruing since the Haugabooks first demanded return of the money. The trial court awarded the interest to the Haugabooks. On appeal, the Crislers argued the Haugabooks had failed to "make prayer" for prejudgment interest in their original complaint and were not entitled to amend the complaint once the trial court entered judgment without "leave of court" – or the court's permission to follow a non-routine procedure. But the Court of Appeals upheld the trial court's ruling.

Today's opinion points out that under Official Code of Georgia § 7-4-15, "[a]ll liquidated demands…bear interest from the time the party shall become liable." In 1847, the Georgia Supreme Court ruled in *Anderson v. State of Georgia* that "one who wrongfully detains the money of another is chargeable with interest from the time he detains it," the opinion states. "The only requirement for a prejudgment interest award upon a liquidated damages claim is a

demand." That requirement is to give the opposing party a chance to contest it prior to entry of the final judgment. "Inasmuch as Crisler was given an opportunity to contest the award by opposing Haugabook's amendment and motion for the entry of final judgment, the award of prejudgment interest was proper."
Attorneys for Appellants (Crislers): J. Edward Allen, Jeffrey Deloach
Attorneys for Appellees (Haugabooks): H. Jerome Strickland, Matthew Strickland, Christopher Arnold

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

* Cecil Jackson, Jr. (Troup Co.)	**JACKSON V. THE STATE (S12A0623)**
* Rodger Jackson, Jr. (Cobb Co.)	**JACKSON V. THE STATE (S12A0784)**
* Michael Bernard Kendrick (Fulton Co.)	**KENDRICK V. THE STATE (S12A0009)**
* Jesus Guerrero Manzano (Cobb Co.)	**MANZANO V. THE STATE (S12A0280)**
* Kevin Ian Martin (Cobb Co.)	**MARTIN V. THE STATE (S12A0327)**
* Hakim Muhammad (Rockdale Co.)	**MUHAMMAD V. THE STATE (S12A0180)**
* Roger James Reed (Dougherty Co.)	**REED V. THE STATE (S12A0443)**
* Nathaniel Scott (Fulton Co.)	**SCOTT V. THE STATE (S12A0193)**
* Darryl White (Fulton Co.)	**WHITE V. THE STATE (S12A0440)**
* Edison Ariel Ortiz (Emanuel Co.)	**ORTIZ V. THE STATE (S12A0433)** (Although the Court upheld Ortiz's murder conviction, it threw out one of two counts of aggravated assault, which should have been merged into the murder conviction because they involved the same set of circumstances.)

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

* Xavier Cornell Dicks **IN THE MATTER OF: XAVIER CORNELL DICKS (S12Y0769)**

The Court has accepted a petition for voluntary discipline and ordered the **18-month suspension** of attorney:

* Marcea O'Brien-Carriman **IN THE MATTER OF: MARCEA O'BRIEN-CARRIMAN (S12Y0731)**

The Court has ordered the **12-month suspension** of attorney:

* Brenden E. Miller **IN THE MATTER OF: BRENDEN E. MILLER (S10Y1548)**

The Court has rejected the petition for voluntary discipline of a **six-month suspension** as insufficient from attorney:

* Jerry Boykin **IN THE MATTER OF: JERRY BOYKIN (S11Y1742)**