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The Objection Exception is Overruled! The Georgia Supreme Court Makes a Course Correction by Reviving the Contemporaneous Objection Rule

Ryan Read*

I. INTRODUCTION

What comes to mind when you think of evidence being presented at jury trials? Typically, both sides prevent evidence to the jury, and both sides fight hard to make sure no prejudicial evidence is allowed in that would bias the jury against their client. Both sides also work hard to prepare persuasive openings and closings to further affect the jury's perception of their client, the opposition, and the evidence that has been presented. So, when an attorney on one side makes prejudicial statements about the opposing counsel's client, one would naturally expect an objection to be made, right? Well, in Georgia, you would be wrong.¹ Until *Williams v. Harvey*,² trial lawyers were essentially allowed to ignore critical objections. Whenever prejudicial statements against their client were made, even ones that violated already granted motions *in limine*, counsel could sit back, not object, and later get the case reversed on appeal.³ It was that easy. Even if a trial lawyer lost,

* I would like to sincerely thank and acknowledge my fellow law review members as well as the Editorial Board for their help and encouragement in writing this Casenote. Additionally, I would like to thank my parents and family for always supporting me through my endeavors.

1. *See generally* *Williams v. Harvey*, 311 Ga. 439, 443–44, 858 S.E.2d 479, 484–85 (2021) (describing how, prior to this decision, Georgia's caselaw did not require contemporaneous objections to prejudicial statements to be made at trial, thus allowing the statements to be preserved for appeal).

2. 311 Ga. 439, 858 S.E.2d 479 (2021).

3. *Id.* at 443–44, 46, 858 S.E.2d at 485, 487.

the attorney still had a chance of getting the case overturned, essentially creating a “win-win” scenario. Fortunately for Johnny Williams, the Georgia Supreme Court decided that trial lawyers would no longer be allowed to sit on their hands at trial and must contemporaneously object to prejudicial statements when the statements are made instead of raising the cost of the litigation for an unnecessary appeal.⁴

II. FACTUAL BACKGROUND

Johnny Williams (Williams) was a sixty-seven-year-old who enjoyed physical activity, including yard work; singing in his church choir; and being around his friends and family.⁵ On April 11, 2013, Williams was driving a tractor for his employer when Rubin Harvey (Harvey), the Defendant, driving a dump truck for Oxford Construction Company (Oxford), crashed into him. Williams was thrown from his tractor into a ditch off the highway. Due to this accident, Williams suffered critical injuries, including traumatic brain injuries, multiple bone fractures, and seizures. After spending six weeks in the hospital and five weeks in a rehabilitation center, Williams was discharged to his home, where he needed twenty-four-hour supervision from nursing assistants to monitor his daily activities. As a result of his injuries, Williams suffered daily. He developed dementia, had trouble walking, became agitated and confused, and was forced to take medication each day to cope with these hardships.⁶

Williams’s family later filed suit against both Harvey and Oxford for negligence in causing Williams’s injuries.⁷ At trial, both defendants conceded that Harvey was negligent in causing Williams’s injuries, and the only issue was how Williams’s damages would be apportioned between them. While at trial, two life care plan options were formulated for Williams and presented as remedies for his future medical costs. The first option, the home care option, provided Williams stay at his home, while the second option, the residential memory care unit or nursing home option, provided Williams move into a nursing home. An economics expert who testified at trial calculated the total special damages for the home care option to be \$3,382,383.15. Whereas the cost for the residential memory care unit option would be \$2,008,790.15.

4. *Id.* at 450–52, 858 S.E.2d at 489–90.

5. *Id.* at 440, 858 S.E.2d at 482–83.

6. *Id.* at 439–40, 858 S.E.2d at 482–83.

7. *Id.* at 440–41, 858 S.E.2d at 483.

After trial, the jury returned a verdict of \$18,000,000 in favor of Williams.⁸ Harvey and Oxford then filed a motion for new trial on the grounds that, during his closing, Williams's counsel violated the trial court's pretrial motion *in limine* ruling against arguments that would "overly inflame the emotions of the jury."⁹ Upon consideration of the motion, the trial court held that there was no violation of the motions *in limine* against inflammatory arguments.¹⁰

Initially, the trial court reserved ruling on the defendants' motion *in limine* as it pertained to potential testimony or evidence, but held "any statements, arguments, or evidence offered predominantly to overly inflame the emotions of the jury or to elicit excessive or undue sympathy, hostility, or prejudice for or against either party is prohibited."¹¹ Counsel for Oxford and Harvey contended this ruling was violated when Williams's counsel, during his closing argument, stated to the jury, "I hope your verdict is not a double-down on sentencing him to a nursing home because if you sentence him to a nursing home, you're signing his death warrant."¹²

Oxford and Harvey then appealed the trial court's ruling to the Georgia Court of Appeals, arguing that the trial court erred in failing to prevent the opposing counsel's inflammatory remarks during the opposing counsel's closing argument.¹³ The court of appeals reversed the trial court's ruling, holding Williams's closing argument clearly violated the trial court's motion *in limine* ruling preventing inflammatory remarks when his counsel likened the nursing home plan to sentencing Williams to death.¹⁴ The court of appeals also held that the trial court's ruling on the motion *in limine* was sufficient, by itself, to preserve the issue for appeal even though there was no

8. *Id.* at 440–41, 858 S.E.2d at 483. The trial court credited both defendants with an insurance payout of \$5,432,103.84 and entered a judgment in favor of Williams for \$12,567,896.16. *Id.* at 441, 858 S.E.2d at 483. Also, the trial court awarded Williams with a prejudgment interest for \$1,865,753.42 because both defendants failed to accept Williams's pretrial demand for \$6,000,000. *Id.*

9. *Harvey v. Williams*, 354 Ga. App. 766, 768, 841 S.E.2d 386, 389 (2020).

10. *Id.* at 768, 841 S.E.2d at 389.

11. *Id.* The defendants sought to exclude, via motion *in limine*, all statements, contentions, arguments, inferences, or proffer of any evidence that would elicit sympathy for Williams. However, the trial court narrowed the scope of this broad motion. *Id.*

12. *Id.* Also, during Williams's closing argument, his counsel alluded to the stereotypical notions of what happens to patients at nursing homes: "[L]et's just face it, we hear all the time about what goes on in a nursing home. I do not in good conscience believe that you are desiring to do that to Mr. Williams." *Id.*

13. *Id.* at 768–69, 841 S.E.2d at 389.

14. *Williams*, 311 Ga. at 442, 858 S.E.2d at 484.

contemporaneous objection at the time of the violation.¹⁵ Williams then appealed to the Georgia Supreme Court who issued a writ of certiorari allowing for review of the court of appeals' decision.¹⁶ The supreme court reversed the appellate court's holding and determined Harvey and Oxford's counsel were required to contemporaneously object to Williams's attorney's inflammatory remarks as a violation of the motion *in limine*.¹⁷ The supreme court disagreed with the court of appeals and held that the pretrial motion *in limine*, by itself, was not sufficient to preserve the violation for appeal because a contemporaneous objection was needed.¹⁸ From this determination, the supreme court also held that, in civil cases, there is no need for appellate review of unpreserved claims of error during closing arguments.¹⁹ After reaching this conclusion, the supreme court then overruled its decision in *Stotle v. Fagan*²⁰ as well as other cases that followed it.²¹

III. LEGAL BACKGROUND

A. *The Contemporaneous Objection Rule*

The “contemporaneous objection rule,” is the “doctrine that a timely and proper objection to the admission of evidence must be made at trial to afford the trial court an opportunity to conduct a meaningful inquiry into possible prejudice before or promptly after verdict and to preserve the issue for appeal.”²² The rule is a common law rule independently developed by the states and, thus, may differ depending upon jurisdiction, but most jurisdictions share similar rules.²³ The primary purpose of the rule is to allow the trial court the opportunity to take any necessary corrective action at the time the alleged error is made, and thus, reduce the possibility an appeal will result in a reversal.²⁴ This

15. *Id.*

16. *Id.*

17. *Id.* at 447, 858 S.E.2d at 487.

18. *Id.*

19. *Id.* at 449, 858 S.E.2d at 488–89.

20. 291 Ga. 477, 731 S.E.2d 653, *overruled by Williams*, 311 Ga. at 451, 858 S.E.2d at 490.

21. *Williams*, 311 Ga. at 449–51, 858 S.E.2d at 488–90.

22. *Contemporaneous Objection Rule*, BLACK'S LAW DICTIONARY (11th ed. 2019).

23. Stacy L. Davis, et al., FEDERAL PROCEDURE LAWYER'S EDITION § 41:320, Westlaw (database updated Sept. 2021).

24. Michael H. Graham, HANDBOOK OF FEDERAL EVIDENCE § 103:2 (9th ed.), Westlaw (database updated Nov. 2020).

corrective action includes allowing the trial court to provide curative instructions to the jury, which may help negate any prejudice that occurred due to the violation.²⁵ Also, as noted by the Supreme Court of the United States in *Wainright v. Sykes*,²⁶ the rule prevents “sandbagging” lawyers from purposefully failing to object so they may raise the error on appeal and get the judgment reversed.²⁷ This sentiment is similarly echoed in the Georgia Supreme Court case, *Weldon v. State*,²⁸ where the supreme court held a party cannot ignore an injustice at trial and then appeal the injustice after failing to receive a favorable verdict.²⁹

Georgia’s contemporaneous objection rule requires counsel to make a proper objection, on the record, to an alleged error at the earliest possible moment in order to preserve it on appeal.³⁰ The contemporaneous objection rule has been the foundation for trial practice and evidentiary issues in Georgia for over 150 years,³¹ as displayed by both *Burtine v. State*³² in 1855 and *Goodtitle v. Roe*³³ in 1856.

In *Burtine*, the Solicitor General examined one of the jurors to determine if the juror was competent, and the defendant’s counsel permitted the questioning to continue without raising an objection.³⁴ On appeal to the supreme court, the defendant’s counsel argued it was an error to question the juror. The court determined it was unnecessary to decide whether it was proper for the Solicitor General to question the juror because the question was permitted without any objection. The court held that, to preserve an error on appeal, an objection must be made at trial.³⁵

25. *Lynn v. State*, 310 Ga. 608, 612, 852 S.E.2d 843, 849 (2020) (describing how a trial court can negate the harmful effects that improperly introduced evidence may have on a jury by providing prompt curative instructions rather than by simply granting a mistrial).

26. 433 U.S. 72 (1977).

27. *Id.* at 89–90.

28. 297 Ga. 537, 775 S.E.2d 522 (2015).

29. *Id.* at 541, 775 S.E.2d at 525.

30. *Williams*, 311 Ga. at 442, 858 S.E.2d at 484.

31. *Id.*

32. 18 Ga. 534 (1855).

33. 20 Ga. 135 (1856).

34. *Burtine*, 18 Ga. at 535.

35. *Id.* at 536–37.

The supreme court made a similar decree in *Goodtitle*, except it applied the rule to evidence instead of testimony or examinations.³⁶ In *Goodtitle*, an action for ejectment to recover land, deeds were brought in as evidence to show proof of ownership, and the defense objected to a specific deed brought in by the administrator of the land.³⁷ The court ultimately decided a court is not bound to exclude evidence, even inadmissible evidence, unless the evidence was objected to and grounds for the objection were stated. If a party fails to object to the evidence, then the party is considered to have waived its right to appeal, and the evidence may be properly heard by the jury.³⁸

Georgia's contemporaneous objection rule has remained relatively the same since both *Burtine* and *Goodtitle*, with the only changes being what the rule may apply to at trial.³⁹ For instance, in the 1996 case *Miller v. State*,⁴⁰ the defendant alleged the District Attorney improperly characterized facts not in evidence and made prejudicial statements during closing argument; however, the defendant failed to object at the time these statements were made.⁴¹ The supreme court held that the defendant's failure to object to the allegedly improper arguments at the time they occurred did not allow the trial court an opportunity to remedy the situation. This failure to object precluded any appellate review. Thus, the supreme court's conclusion helped to support the fact that the contemporaneous objection rule applies to evidence presented at trial as well as arguments made at trial.⁴²

The contemporaneous objection rule seems relatively straightforward. However, when paired with Georgia's unclear caselaw interpreting motions *in limine*, the rule becomes more difficult to interpret and apply.

B. Motions in Limine

A motion *in limine* is a pretrial motion or request used in primarily two ways: (1) to prevent certain evidence from being referenced to or offered at trial (also known as a "prohibitive" or "prophylactic" order); or (2) to allow the court to establish and make a final ruling on the

36. *Goodtitle*, 20 Ga. at 140–41.

37. *Id.* at 137–38.

38. *Id.* at 140.

39. *Williams*, 311 Ga. at 442, 858 S.E.2d at 484. See generally *Sharpe v. Ga. Dept. of Transp.*, 267 Ga. 267, 476 S.E.2d 722 (1996); *Weldon*, 297 Ga. at 541, 775 S.E.2d at 525.

40. 267 Ga. 92, 475 S.E.2d 610 (1996).

41. *Id.* at 92, 475 S.E.2d at 611.

42. *Id.*

admissibility of evidence prior to trial (also known as an “exclusionary” order).⁴³ The primary purpose of a motion *in limine* is to preclude either irrelevant or prejudicial evidence from being presented and then objected to in front of a jury.⁴⁴ Typically, motions *in limine* may limit the admissibility of any kind of evidence that may normally be objected to at trial, including witness testimony, privileged matters, sensitive terms, prior settlements and lawsuits, and other similar things.⁴⁵

For instance, in *Tollete v. State*,⁴⁶ where a criminal defendant argued he deserved a new trial due to the prosecution’s improper remarks during closing, the supreme court noted a motion *in limine* may be used to limit evidence as well as specific arguments made at trial.⁴⁷ However, in *Harley Davidson Motor Co. v. Daniel*,⁴⁸ the supreme court changed how motions *in limine* would affect issue preservation on appeal, thus modifying how the contemporaneous objection rule would operate and apply at trial.⁴⁹

In *Harley Davidson Motor Co.*, the supreme court held for the first time that when a motion *in limine* to exclude evidence was denied, the moving party did not need to renew its objection at trial to preserve the party’s right to appeal.⁵⁰ In this products liability case, the plaintiff attempted to use a motion *in limine* to exclude a recall letter from being introduced at trial.⁵¹ The trial court denied the motion *in limine* for an exclusionary order, and the recall letter was admitted at trial without an objection. On appeal, the court of appeals held that, despite the ruling on the motion *in limine*, a contemporaneous objection was still needed to preserve the issue for review. The supreme court disagreed with the court of appeals and, for the first time, held that motions *in limine*, by themselves, may preserve an issue on appeal even if the motion was denied. In doing so, the court decided a further objection was not necessary as the trial court was put on notice of possible error

43. *Williams*, 311 Ga. at 442, 858 S.E.2d at 484. See also Susan E. Loggans, LITIGATING TORTS CASES § 19:3, Westlaw (database updated Sept. 2021) (explaining different types of motions *in limine*).

44. *Williams*, 311 Ga. at 442, 858 S.E.2d at 484. See also Henry B. Rothblatt, 20 AM. JUR. TRIALS 441 § 2, Westlaw (database updated Dec. 2021) (analyzing the nature and purpose of motions *in limine*).

45. Rothblatt, *supra* note 44, §§ 10, 16, 18–20, 25.

46. 280 Ga. 100, 621 S.E.2d 742 (2005).

47. *Id.* at 103–05, 621 S.E.2d at 747–48.

48. 244 Ga. 284, 260 S.E.2d 20 (1979).

49. *Williams*, 311 Ga. at 443, 858 S.E.2d at 484–85.

50. *Id.*

51. *Harley Davidson Motor Co.*, 244 Ga. at 284–85, 260 S.E.2d at 21–22.

by the motion *in limine*. Also, a further objection in front of the jury would only highlight the disputed evidence and create new problems. The court also analyzed the Federal Rules of Evidence (FRE) as they existed at the time and determined, specifically, FRE 103(c) supported the court's holding.⁵²

Due to the court's holding in *Harley Davidson Motor Co.*, a party no longer needs to renew its objection when disputed evidence is introduced at trial as long as they had a prior ruling on a motion *in limine*. The motion *in limine* ruling, by itself, serves as a way to preserve the moving party's right to appeal, thus removing the requirement for a contemporaneous objection at trial.

Three years later, in *Reno v. Reno*,⁵³ the Georgia Supreme Court applied the same reasoning from *Harley Davidson Motor Co.*⁵⁴ In *Reno*, an action for divorce, the husband's counsel sought a motion *in limine* to limit testimony regarding any adultery allegations that might have been made or alluded to by his ex-wife.⁵⁵ The trial court granted the motion and issued a prohibitive order. At trial, the wife violated this order while testifying, but the husband's counsel made no objection at the time of the violation. On appeal to the supreme court, the issue was whether a party needed to contemporaneously object to a violation of an already granted motion *in limine* in order to preserve that issue for review. The supreme court held that the reasoning in *Harley Davidson Motor Co.*, also applied to the current situation, where a motion *in limine* had been granted, and thus, a further objection was not needed. The court made this determination as it believed requiring an additional objection at trial would defeat the purpose of the motion *in limine* and only bring more attention to the prejudicial evidence.⁵⁶

The rulings of *Reno* and *Harley Davidson Motor Co.* cemented the notion that a contemporaneous objection to disputed evidence was no longer needed as long as there was any prior ruling, either denied or granted, on a motion *in limine*.⁵⁷ The prior ruling would then preserve the issue for appeal.⁵⁸ This rule only applied to disputed evidence and not to disputed arguments made by counsel.⁵⁹ However, after these

52. *Id.* at 285–86, 260 S.E.2d at 22.

53. 249 Ga. 855, 295 S.E.2d 94 (1982).

54. *Williams*, 311 Ga. at 443, 858 S.E.2d at 484.

55. *Reno*, 249 Ga. at 855, 295 S.E.2d at 95.

56. *Id.* at 855–56, 295 S.E.2d at 95–96.

57. *Williams*, 311 Ga. at 443, 858 S.E.2d at 484–85.

58. *Id.*

59. *Id.* at 443, 858 S.E.2d at 485.

decisions by the supreme court, the court of appeals began applying and extending this new rule to motions *in limine* regarding argument as well.⁶⁰ These decisions made by the court of appeals would eventually conflict with future Georgia statutes and caselaw, adding more confusion to procedural rules which should be easy to understand and apply.

C. Federal Rules of Evidence Rule 103 and the Adoption of O.C.G.A. § 24-1-103

In 2000, FRE 103⁶¹ (pertaining to rulings on evidence) was amended to clarify that when a trial court makes a definite ruling on the record, either before or at trial, a party does not need to renew an objection to preserve a claim for appeal.⁶² This amendment applies to all evidentiary rulings, including rulings on motions *in limine*.⁶³ Also, this amendment was made to help ease uncertainty for litigants as there were differing rules across the country for handling the interaction between motions *in limine* and contemporaneous objections.⁶⁴ However, the Advisory Committee for the amendment noted that if an opposing party violated the initial ruling on a motion *in limine*, an objection must be made at the time the evidence was offered to preserve the issue for appeal.⁶⁵ This change in the FRE goes against the rules previously stated above and held by the Georgia Supreme Court and the Georgia Court of Appeals, but the change would not cause issues until later as Georgia's evidence code at the time was not patterned after the FRE.⁶⁶ This is significant because, in 2011, the Georgia General Assembly enacted Georgia's new evidence code and largely patterned it after the FRE.⁶⁷

The new evidence code took effect on January 1, 2013, and it established O.C.G.A. § 24-1-103,⁶⁸ which is specifically patterned after FRE 103.⁶⁹ Since the inception of Georgia's new evidence code, Georgia courts have held if a rule in the evidence code is materially identical to the FRE, then the Georgia courts must look to federal appellate court

60. *Id.*

61. FED. R. EVID. 103.

62. *Williams*, 311 Ga. at 444, 858 S.E.2d at 485.

63. *Id.*; FED. R. EVID. 103 Advisory Committee's Note to 2000 amendment.

64. FED. R. EVID. 103 Advisory Committee's Note to 2000 amendment.

65. *Williams*, 311 Ga. at 444, 858 S.E.2d at 485.

66. *Id.* at 444–45, 858 S.E.2d at 485–86.

67. *Id.* at 444–45, 858 S.E.2d at 485.

68. O.C.G.A. § 24-1-103 (2021).

69. *Williams*, 311 Ga. at 445, 858 S.E.2d at 485.

decisions, especially the Supreme Court of the United States and the United States Court of Appeals for the Eleventh Circuit.⁷⁰ Further, in *Harris v. State*⁷¹ and *Beck v. State*,⁷² both 2020 cases, the Georgia Supreme Court concluded that the adoption of the new evidence code officially abrogated previous Georgia evidentiary rules and caselaw.⁷³ Also, the supreme court noted in *Smith v. State*⁷⁴ (a case decided about a month earlier than *Williams*) that the Advisory Committee Notes are highly persuasive when interpreting and applying the new evidence code.

Thus, Georgia courts no longer look to old state court cases, such as *Harley Davidson Motor Co.* and *Reno*, when applying the new evidence rules. Instead, courts look to how the federal appellate courts have applied the contemporaneous objection rule in tandem with motions *in limine*. For example, in *Cephus v. CSX Transportation, Inc.*⁷⁵ and *Thorncreek Apartments III, LLC v. Mick*,⁷⁶ both federal appellate cases, the courts required a contemporaneous objection to arguments that violated prohibitive motion *in limine* rulings.⁷⁷ These discrepancies—between the old Georgia cases relying on outdated evidentiary rules and caselaw and the new cases applying the newly adopted evidence code—have created confusion in determining what rules should be applied.

D. O.C.G.A. § 9-10-185 and Stolte v. Fagan: Two Ways Around the Contemporaneous Objection Rule

When there is a violation of a motion *in limine* without a contemporaneous objection, a party may achieve appellate review through two routes.⁷⁸ The first route is by claiming that the ruled-upon motion *in limine* should be considered an “objection made” so that a contemporaneous objection to the alleged violation is not required.⁷⁹

70. *Id.* at 444–45, 858 S.E.2d at 485–86. Since the adoption of Georgia’s new evidence code in 2011, the Georgia state courts look to the federal appellate courts for guidance when interpreting the new code as the federal courts have experience in applying the FRE. *Id.*

71. 310 Ga. 372, 850 S.E.2d 77 (2020).

72. 310 Ga. 491, 852 S.E.2d 535 (2020).

73. *Harris*, 310 Ga. at 378, 850 S.E.2d at 83 n.14; *Beck*, 310 Ga. at 498, 852 S.E.2d at 541 n.3.

74. 311 Ga. 288, 291, 857 S.E.2d 698, 700 n.4.

75. 771 F. App’x 883 (11th Cir. 2019).

76. 886 F.3d 626 (7th Cir. 2018).

77. *Cephus*, 771 F. App’x. at 895; *Mick*, 886 F.3d at 635.

78. *Williams*, 311 Ga. at 447, 858 S.E.2d at 487.

79. *Id.* at 447–48, 858 S.E.2d at 487–88.

This route is taken through O.C.G.A. § 9-10-185,⁸⁰ which provides that “[o]n objection made” to an improper argument, the court may rebuke counsel, provide jury instructions, and order a mistrial.⁸¹ However, this route would likely not work for the defendants in this case as the objection made requirement has consistently been interpreted as requiring a contemporaneous objection, thus not allowing a motion *in limine* to act in its place.⁸²

The second route for potential appellate review was through *Mullins v. Thompson*,⁸³ which provides that appellate courts may still review improper arguments made during closing, even without a timely contemporaneous objection, if the improper argument “in reasonable probability” changed the result of the trial.⁸⁴ *Mullins* represents the first time the Georgia Supreme Court applied the “reasonable probability” standard to a civil case where there was a failure to object to an improper closing.⁸⁵ However, the supreme court has criticized this route in the past.⁸⁶ For instance, in *Stolte*, the court questioned whether there was any validity for appellate review of untimely objections to closing arguments in civil cases, when such review is not conducted in any other instances besides death penalty cases.⁸⁷ This standard of review does not have large precedential value as it has only been applied twice in civil cases since *Mullins*: the first time being in *Moxley v. Moxley*,⁸⁸ and the second time being in *Stolte*.⁸⁹

After this standard of review was created, the Georgia Supreme Court refused to extend it further. In 2016, in *Gates v. State*,⁹⁰ the supreme court declined to extend the “reasonable probability” standard to non-death penalty cases, stating that appellate review is not accessible when the defense fails to make a contemporaneous objection

80. O.C.G.A. § 9-10-185 (2021).

81. *Id.*

82. *Williams*, 311 Ga. at 448, 858 S.E.2d at 488 (citing *Wright v. Wright*, 222 Ga. 777, 781, 152 S.E.2d 363, 367 (1966); *Ehrlich v. Mills*, 203 Ga. 600, 601, 48 S.E.2d 107, 108 (1948)).

83. 274 Ga. 366, 553 S.E.2d 154 (2001), *overruled by Williams*, 311 Ga. at 451, 858 S.E.2d at 490.

84. *Mullins*, 274 Ga. at 366–67, 553 S.E.2d 155–56.

85. *Williams*, 311 Ga. at 450, 858 S.E.2d at 489.

86. *Id.* at 448, 858 S.E.2d at 488.

87. *Stolte*, 291 Ga. at 483, 731 S.E.2d at 657 n.4.

88. 281 Ga. 326, 638 S.E.2d 284 (2006), *overruled by Williams*, 311 Ga. at 451, 858 S.E.2d at 489–90.

89. *Williams*, 311 Ga. at 450, 858 S.E.2d at 489.

90. 298 Ga. 324, 781 S.E.2d 772 (2016).

to opposing counsel's closing argument.⁹¹ Thus, the supreme court has recently taken a stand against allowing appellate review when counsel fails to raise a timely contemporaneous objection to alleged violations during closing arguments, even when these arguments may have changed the outcome of the trial.

IV. COURT'S RATIONALE

In *Williams*, the Georgia Supreme Court utilized the legal background outlined above when faced with two related issues.⁹² The first issue was whether a timely contemporaneous objection must be raised for a violation of a ruled upon motion *in limine*, during the opposing counsel's closing, in order to preserve the issue for appeal.⁹³ The second issue was whether appellate review in civil cases is an available option when the party fails to raise a contemporaneous objection to improper argument.⁹⁴ All justices concurred, and the opinion of the court authored by Justice McMillian analyzed the precedent and legal background outlined above to examine each of these issues one-at-a-time.⁹⁵

A. Contemporaneous Objections Are Required

The supreme court first concluded that a contemporaneous objection is required by counsel primarily for five reasons. First, the court disagreed with the court of appeals' extension of the rules in *Harley Davidson Motor Co.* and *Reno*, to motions *in limine* related to argument, because this extension was done without any explanation and had never been made in any supreme court cases.⁹⁶ Second, the holdings in *Reno* and the near forty years of precedent following *Reno*, which reasoned that a contemporaneous objection is not required for preservation if a party violated a ruled upon motion *in limine*, were abrogated by the new evidence code, which was codified in O.C.G.A. § 24-1-103(a)(2).⁹⁷ In analyzing this section the court relied on federal precedent to determine that the statute should extend equally to both

91. *Id.* at 328–29, 781 S.E.2d at 776–77.

92. *Williams*, 311 Ga. at 447, 449, 858 S.E.2d at 487, 488–89.

93. *Id.* at 447, 858 S.E.2d at 487.

94. *Id.* at 449, 858 S.E.2d at 488–89.

95. *Id.* at 439, 450–52, 858 S.E.2d at 479, 489–90.

96. *Id.* at 443–44, 858 S.E.2d at 485.

97. *Id.* at 445–46, 858 S.E.2d at 486; *see id.* at 447, 858 S.E.2d at 487 n. 5.; *see also* O.C.G.A. § 24-1-103(a)(2) (2021).

evidence and statements made by counsel during closing arguments.⁹⁸ Third, in relying on the reasoning previously mentioned in *Weldon*, the court believed requiring a contemporaneous objection to an alleged violation of a motion *in limine* would further the purpose of the contemporaneous objection rule as it would allow the trial court an opportunity to remedy the error at the time the error is made.⁹⁹ Fourth, the court held that the contemporaneous objection rule would not further highlight prejudicial evidence or arguments in front of the jury.¹⁰⁰ Relying on *Lynn*, the court reasoned that the contemporaneous objection requirement would give the trial court an opportunity to provide curative instructions and warn counsel of the violation, resolving any prejudicial effects.¹⁰¹ Lastly, the court, echoing the sentiments mentioned earlier in *Wainright* and *King*, preferred the contemporaneous objection rule approach because it is more efficient; incentivizes parties to challenge alleged violations at the time they occur; and prevents parties from sitting back, doing nothing, and appealing the case later.¹⁰²

B. Unpreserved Claims of Error Should Not Be Reviewed, Thus Stolte Is Overruled

In *Williams*, the defendants made two arguments asserting that their unpreserved claims of error should be reviewed on appeal.¹⁰³ First, the defendants asserted that the ruled upon motion *in limine* should be considered an “objection made” under O.C.G.A. § 9-10-15, thus making a contemporaneous objection unnecessary.¹⁰⁴ The supreme court disagreed with this reasoning.¹⁰⁵ The court determined that precedent interpreting O.C.G.A. § 9-10-15 explicitly held the “objection made” requirement to be considered a contemporaneous objection.¹⁰⁶ Also, the defendants failed to cite to any cases where a motion *in limine* acted as an objection made under O.C.G.A. § 9-10-15, thus rendering their first argument moot.¹⁰⁷

98. *Williams*, 311 Ga. at 446–47, 858 S.E.2d at 486–87.

99. *Id.* at 446, 858 S.E.2d at 486.

100. *Id.* at 447, 858 S.E.2d at 487.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* at 448, 858 S.E.2d at 488.

107. *Id.*

Second, the defendants relied on *Stolte*, asserting that appellate review was still available to consider whether the improper argument in “reasonable probability” changed the trial’s result.¹⁰⁸ The court responded by referring to their previous lack of confidence in *Stolte*, where the court questioned whether the reasonable probability standard should even be applied in civil cases when it is normally only applied in death penalty cases.¹⁰⁹ Instead of following the reasonable probability standard, the court utilized the reasoning previously mentioned from *Gates* and determined that appellate review in civil cases for failures to raise contemporary objections is unnecessary as the matter should have initially been resolved by the trial court during trial.¹¹⁰ Thus, the court determined the defendant’s arguments to be unpersuasive and held that there is no reason in civil cases to review unpreserved claims of error in closing statements.¹¹¹ After making this determination, the court went on to overrule *Stolte* and any other cases following *Stolte’s* reasonable probability standard for appellate review of failures to object to motion *in limine* violations.¹¹²

In conclusion, the Georgia Supreme Court determined that contemporaneous objections to arguments violating motions *in limine* were required per Georgia’s new evidence rules.¹¹³ The court also established that the new evidence rules do not allow motions *in limine* to preserve violations for appeal on their own, and thus, abrogated any old state caselaw that provided otherwise.¹¹⁴ Finally the court held that unpreserved claims of error should not be reviewed and overruled *Stolte*, along with the reasonable probability standard for contemporaneous objections in civil cases.¹¹⁵ The court held in favor of Williams and reversed the court of appeals’ decision, thus granting the jury’s award of \$18,000,000.¹¹⁶

V. IMPLICATIONS

The Georgia Supreme Court’s decision in *Williams* will have a significant effect on how trial and appellate lawyers approach cases.

108. *Id.*

109. *Id.* at 448, 450–51, 858 S.E.2d at 488–89.

110. *Id.* at 448–51, 858 S.E.2d at 488–90.

111. *Id.* at 449, 451, 858 S.E.2d at 488–90.

112. *Id.* at 452, 858 S.E.2d at 491 n.12.

113. *Id.* at 445–447, 451–52, 858 S.E.2d at 485–87, 490.

114. *Id.* at 445–47, 858 S.E.2d at 486–87.

115. *Id.* at 449–51, 858 S.E.2d at 488–90.

116. *Id.* at 441, 453, 858 S.E.2d at 483, 491.

What may seem like a small change in Georgia's evidentiary law will have a lasting impact on virtually every civil and criminal non-death penalty case that goes to trial.

Requiring contemporaneous objections to motions *in limine* will force trial lawyers to better plan their pretrial and trial strategy as they now need to make sure their case has a chance to survive appeal.¹¹⁷ Trial lawyers will now have to be on the edge of their seat during trial and must consider working hand-in-hand with appellate experts to help safeguard the record for appeal.¹¹⁸

This ruling will also incentivize trial attorneys to narrow the scope of their pretrial motions *in limine* and thus, promote efficiency, fairness, and predictability.¹¹⁹ Before *Williams*, cases could be overturned because the losing parties were able to take advantage of using broad motions *in limine* on appeal without actually objecting to any unfavorable statements made at trial.¹²⁰ This tactic allowed trial attorneys to sit on their hands during trial and then hire an expensive appellate lawyer to "comb the record" for any potential violation at trial.¹²¹

Not only does this ruling help to promote efficiency, fairness, and predictability by reducing the number of appeals, but it will also act as a "course correction" for Georgia law as it will put Georgia in line with most of the other states in the country.¹²² This change will also put Georgia more in line with the FRE which was the original intent of the

117. Rosie Manins, *Ga. Justices Tighten Net On Evidence Exclusions, Objections*, LAW360 (May 20, 2021, 3:59 PM), <https://www.law360.com/articles/1386225/ga-justices-tighten-net-on-evidence-exclusions-objections> (describing the future impact the *Williams* ruling will have on both trial and appellate lawyers in all fields).

118. Manins, *supra* note 117, at 2. Austin Bersinger, Partner at Barnes & Thornburg LLP, stated that "it [is] more important now than ever for lawyers to be [alert] at trial" and develop strategies to work with appellate lawyers so that they may preserve the evidentiary record. *Id.*

119. Manins, *supra* note 117, at 2. Elissa Haynes, appellate attorney and Partner at Drew Eckl & Farnham LLP, stated that the *Williams* ruling will "make all lawyers on both sides of the 'v' think twice about drafting their motions in limine." *Id.*

120. Manins, *supra* note 117, at 1. Prior to *Williams*, the caselaw created what Georgia attorneys called the "motion in limine trap" which encouraged large numbers of excessively broad and ambiguous *limine* motions that were difficult to understand but could still overturn cases. *Id.*

121. Manins, *supra* note 117, at 1.

122. Manins, *supra* note 117, at 2. Mathew Stoddard of the Stoddard firm stated that the *Williams* ruling is "an incredibly significant ruling for anyone involved in trials or appeals . . . that puts Georgia law in line with most of the country on how trials should be administered." *Id.*

Georgia General Assembly when it changed Georgia's evidence code in 2011.¹²³

A possible negative consequence of requiring contemporaneous objections will be that more objections will occur at trial, thus increasing the chance of highlighting damaging evidence in front of juries.¹²⁴ Also, requiring contemporaneous objections will no longer allow parties another chance to re-litigate on appeal.¹²⁵ However, the benefits will likely outweigh the negatives. Requiring contemporaneous objections will bring Georgia trial practice back to what it was prior to 1979¹²⁶ and further the integrity of the judicial process by rewarding attentive litigators and by cutting down on needless retrials.¹²⁷ Through this decision, the supreme court makes it clear that Georgia is now a state where judicial integrity is paramount and where there are possibly "no downsides . . . for honest litigants playing by the rules."¹²⁸

123. Manins, *supra* note 117, at 1.

124. Manins, *supra* note 117, at 2.

125. Manins, *supra* note 117, at 2.

126. Manins, *supra* note 117, at 2–3. Because Georgia's contemporaneous objection rule has been around for more than 150 years, the *Williams* ruling essentially brings state trial practice back to what it was prior to 1979, when Georgia justices first held that objections were not necessary to preserve violations of motions *in limine* on appeal. *Id.*

127. Manins, *supra* note 117, at 2–3.

128. Manins, *supra* note 117, at 3. Brandon L. Peak, partner at Butler Wooten & Peak LLP, stated that there are "no downsides to this opinion for honest litigants playing by the rules" as the old motion *in limine* trap was "fundamentally unfair to litigants, wasted judicial resources, and caused needless retrials." *Id.*