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# Store Owner Can't Be Sued Over Murder, Ga. Appeals Court Rules

Two young lawyers made their first-ever oral arguments at the Georgia Court of Appeals for a negligent security case that may not be over.

By **Katheryn Tucker** (/author/profile/Katheryn-Tucker/) | February 11, 2019 at 06:11 PM

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Elissa Haynes, Goodman McGuffey, Atlanta (Courtesy photo).

In a case that may be appealed further, the Georgia Court of Appeals **has ruled** (<https://efast.gaappeals.us/download?filingId=0340709e-f0b6-434e-ba37-174ef808e501>) that a property owner cannot be held liable in a negligent security case over a murder in a convenience store parking lot.

Shaneku McCurdy walked into a Stone Mountain convenience store to buy snacks at about 1 a.m. on Oct. 23, 2015. She made her purchases and left. Although her car was parked right outside the front door, an "unidentified assailant" shot and killed her before she could drive away, according to the opinion written by Judge Amanda Mercier and released Feb. 5.

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McCurty's mother, Shirley Bolton, sued the convenience store owner and operator, Rikaz Food Inc., and its landlord, Golden Business Inc., "alleging that they failed to exercise ordinary care to keep the premises safe and allowed a dangerous condition to exist on the property, creating a nuisance," Mercier said. "Golden moved for summary judgment, arguing that it was not responsible for McCurty's death or any damages suffered by Bolton. The trial court agreed. We find no error."

The other members of the panel—Chief Judge Stephen Dillard and Presiding Judge Sara Doyle—concurred. They affirmed DeKalb County State Court Judge Stacey Hudrick in dismissing the case against the landlord.

"According to Bolton, Golden should have foreseen—and taken steps to prevent—the deadly assault in this case because people often loitered outside of Rikaz's convenience store, other violent crimes had occurred at the store, and the store was located in a high-crime area," Mercier said. "It is true that the foreseeability of a criminal act 'may be established by evidence of one or more prior similar crimes,'" she said, citing *Piggly Wiggly Southern v. Snowden*, 219 Ga. App. 148 (1995). "The key question, however, is the landowner's superior knowledge of the criminal activity."

Mercier said Karim Aly, Golden's sole owner, "testified that he thought Rikaz's store was located in a safe area based on his examination of the property and surrounding neighborhood, and he did not know about any prior crimes in or around the store." Yes, Golden equipped the store with bulletproof glass and security cameras in 2000, but Aly testified that "he incorporates these safety measures in all stores that Golden builds or operates, regardless of store location and partly for insurance purposes," Mercier said.

The mother has "pointed to no evidence that Aly witnessed criminal activity or misconduct" during his visits to check on the store, or that he had been "informed him about crimes or other problems," she said.

Elissa Haynes of Goodman McGuffey, who represented Golden along with partner Robert Luskin, said, "It was a welcome win in light of the recent large negligent security verdicts in similar cases."

"Recent verdicts and trial court opinions have muddied the water and often applied the constructive knowledge element found in slip and fall cases to cases involving shootings at gas stations and apartments," Haynes said. "This opinion helps clarify the standard for what degree of knowledge is necessary and reiterates that there must be some evidence of the premises owner's knowledge of prior substantially similar crime or evidence of a propensity for crime before the premises owner can be held liable."

Haynes said it was her first time presenting oral argument at the Georgia Court of Appeals. She was so nervous she had to ask Luskin to drive her and reviewed her notes en route, she said.

But after the opinion came out, she said the experience was a career highlight. The panel had a lot of questions, and the firm on the opposite side was "easy to work with" and "not contentious," she said.

That was the Summerville Firm.

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"You know they're going to treat you with respect, and you'll do the same," Haynes said.

**Max Thelen, with  
The Summerville  
Firm in Atlanta.**

Maxwell Thelen of the Summerville Firm was also making his first oral argument at the Court of Appeals.

"It was a pleasure to argue this case with Elissa. She is a skilled and professional adversary and the case is an interesting one," Thelen said over the weekend in an email from Iraq, where he is deployed at the moment with his Georgia Army National Guard unit.

"Regarding the outcome, we are a bit disappointed in the decision because it seems to overlook the significant body of case law that reiterates that a property owner is not free to ignore a duty to take reasonable action to make his premises safe," Thelen said. "Decades-old precedent holds that a premises owner cannot bury his head in the sand and escape liability for what he should have known if he had attended to the duties he owed. We are still evaluating our options, but will likely ask the Court of Appeals to reconsider in light of that precedent."

The case is *Bolton v. Golden*, No. A18A1600.

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## Katheryn Tucker

Katheryn Hayes Tucker is an Atlanta-based reporter covering legal news for the Daily Report and other ALM publications.

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