



Supreme Court of Georgia

Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us



CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

Please note: *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case. Most cases are decided within six months of oral argument.*

Monday, August 28, 2017

2:00 P.M. Session

MCCONNELL ET AL. V. GEORGIA DEPARTMENT OF LABOR (S16G1786)

A man who filed a class action lawsuit against the state Department of Labor for inadvertently releasing to the public his and others' personal identifying information is appealing a Court of Appeals decision upholding the dismissal of his suit by a **Cobb County** court.

FACTS: In September 2012, the Georgia Department of Labor created a spreadsheet containing the names, Social Security numbers, ages, home phone numbers, and email addresses of 4,757 individuals over the age of 55 who lived in Cobb, Cherokee and Fulton counties. All were people who had applied for unemployment benefits or other Department of Labor services. In 2013, a Department employee attached the spreadsheet to an e-mail he meant to send to a co-worker but instead sent to about 1,000 members of the public. Thomas McConnell, whose information was on the spreadsheet, was so concerned about identity theft that he enrolled in a identity protection service for \$19 a month.

In January 2014, McConnell filed a class action lawsuit, alleging the Department had been negligent in disclosing "personal information" as defined by Georgia law, invasion of privacy, and breach of fiduciary duty. McConnell sought to get back the amount he was paying for the identify protection service, damages resulting from the impact to his credit score from the

closing of accounts, and compensation for the continuing fear and anxiety of potential identity theft in the future. He did not allege that any act of identity theft had yet occurred.

The Department of Labor filed a motion asking the court to dismiss the lawsuit because McConnell failed to “state a claim” for which relief could be granted under Georgia statutory law. McConnell appealed to the Georgia Court of Appeals, which upheld the lower court’s ruling. The appellate court noted that to have a viable negligence claim, a plaintiff must show that the defendant has a legal duty to conform to a standard of conduct prescribed by law for the protection of others against risk of harm. The court pointed out that the standard can be imposed by a statute or by a common law principle but to date, Georgia case law has not recognized a duty to protect a person’s personal identifying information. (Case law is the law established by court decisions as opposed to by the legislature.) “The trial court correctly concluded that McConnell’s complaint is premised on a duty of care to safeguard personal information that has no source in Georgia statutory law or case law and that his complaint therefore failed to state a claim of negligence,” the appellate court’s opinion says. The opinion notes that given “the General Assembly’s stated concern about the cost of identity theft...it may seem surprising that our legislature has so far not acted to establish a standard of conduct intended to protect the security of personal information....It is beyond the scope of judicial authority, however, to move from aspirational statements of legislative policy to an affirmative legislative enactment sufficient to create a legal duty.” McConnell now appeals to the Georgia Supreme Court.

ARGUMENTS: McConnell’s attorneys argue the appellate court and trial court erred by dismissing the lawsuit because “4,757 Georgia citizens deserve and are entitled to their day in court to establish that they have been damaged by the Department of Labor’s unauthorized public disclosure of their private identifying information and Social Security numbers.” In their complaint, the petitioners noted that the General Assembly has stated that identity theft is one of the fastest growing crimes in the state of Georgia, and they have alleged that the improper dissemination of their personal information has placed them at “imminent, immediate and continuing risk of identity theft.” They have incurred out-of-pocket monetary damages and costs related to credit monitoring and identity protection services, and they have “suffered adverse impact to their credit scores related to the closure of credit accounts.” They have experienced and will continue to experience “fear, upset, anxiety and injury to peace and happiness” due to the disclosure of their personal information. The attorneys also argue that the petitioners’ claims are not barred by sovereign immunity, the legal doctrine that protects the government and its agencies from being sued without the government’s consent. The Department’s lawyers did not even mention this issue until it filed its third motion to dismiss. The petitioners’ claims were improperly dismissed on the merits, the attorneys argue. “In this case, the Department of Labor made much of the argument that the petitioner class members had not yet suffered identity theft, and that therefore the ‘speculative’ nature of damages undercut the validity of petitioners’ claims.” The facts of this case, however, “support the finding that the Department of Labor owes an affirmative duty to protect and preserve the confidentiality of the personal identifying information it collects from Georgia citizens,” McConnell’s attorneys argue. “The Department of Labor required 4,757 class members to divulge their personal identifying information to receive unemployment benefits. By requiring class members to provide this personal identifying information, the Department of Labor assumed an affirmative duty to keep and hold such information confidential and not to disclose the information to the general public.” Furthermore,

through Georgia Code § 10-1-393.8, the Georgia legislature specifically prohibits the disclosure of Social Security numbers. The trial court and Court of Appeals erred in dismissing the petitioners' complaint for failure to state a claim and in holding that the Department of Labor did not owe a basic duty to protect and preserve the personal identifying information and Social Security numbers of 4,757 citizens.

The Department of Labor, represented by the state Attorney General's office, argues that this Court should affirm the dismissal of McConnell's lawsuit. The lawsuit is barred by sovereign immunity for two reasons. "First, McConnell has not suffered any 'losses' recoverable under the Georgia Tort Claims Act," the Department argues in briefs. "Second, the Fair Business Practices Act does not contain an express legislative waiver of the State's sovereign immunity; thus to the extent McConnell's claims are predicated on a purported legal duty arising out of that Act, they are barred by sovereign immunity." Even if it were not barred by sovereign immunity, "this Court should affirm the dismissal of McConnell's lawsuit because he fails to state any claim for relief," the Department's attorneys argue. "First, regarding McConnell's negligence claim, the Department of Labor did not have a legal duty under Georgia Code § 10-1-393.8 or § 10-1-910 to safeguard his personal information from disclosure...Second, regarding McConnell's breach of fiduciary duty claim, the mere fact that he was *required* to disclose his personal information to the Department of Labor is not sufficient to establish a confidential relationship, and hence, a fiduciary duty. Third, regarding McConnell's public disclosure claim, the alleged disclosure of his personal information to 1,000 email recipients does not constitute a disclosure to the 'public at large' or the disclosure of an 'embarrassing' fact. For these reasons – and the fact that McConnell has not suffered a legally cognizable injury – this Court should find that McConnell's claims were properly dismissed," the Department of Labor contends.

Attorneys for Appellant (McConnell): Scott Schweber, Jefferson Allen

Attorneys for Appellee (Department of Labor): Christopher Carr, Attorney General, Kathleen Pacious, Dep. A.G., Loretta Pinkston-Pope, Sr. Asst. A.G., Ellen Cusimano, Asst. A.G.

THE STATE V. HARPER (S17G0199)

State prosecutors are appealing a Georgia Court of Appeals decision that reversed a criminal trespass conviction against a bail recovery agent who broke into a woman's home to arrest a man.

FACTS: In March 2014, David Lamar Harper was working as a bail recovery agent for a professional bondsman in **Bibb County** when he entered Tina McDaniel's locked home without her knowledge or permission. According to briefs filed in the case, the house was locked and Harper entered through a pet door, damaging it in the process. He claimed he was searching for a wanted fugitive defendant, Stephen Jeffrey Collier, whose bond was in default. At the time Harper entered the home, McDaniel was changing clothes in her bedroom when she heard her daughter scream. She found Harper holding Collier to the floor while handcuffing him. When she asked Harper who he was, he said he was "Houston County," leading her to believe he was a Houston County police officer. Harper never identified himself as a bail recovery agent. Collier did not live at McDaniel's house but was there that day to work on a vehicle. As Harper left with Collier, planning to turn him over to state custody, he told McDaniel that she "might need to get your door fixed."

The next day, McDaniel reported the intrusion to police, and Harper was arrested and charged with two counts of criminal trespass under Georgia Code § 16-7-21 (a) and (b) (2). Subsection (a) of the statute says that, “A person commits the offense of criminal trespass when he or she intentionally damages any property of another without consent of that other person and the damage thereto is \$500 or less...” Subsection (b) (2) states that a person commits criminal trespass when he or she enters without authority the premises of another person after receiving “notice from the owner” that “such entry is forbidden.” Following trial, the jury convicted Harper of both counts of criminal trespass, and he was sentenced to 90 days in jail followed by 21 months on probation and a fine of \$1,750. Representing himself “pro se,” Harper appealed to the Court of Appeals. That Court upheld the conviction under § 16-7-21 (a) for the damage he did to the door. But the intermediate appellate court reversed his conviction under § 16-7-21(b) (2) for entering the locked residence without permission. The appellate court ruled that the statute requires “express notice” that the entry was forbidden, and here, “because the homeowner had not given Harper *express* notice not to enter, Harper could not be guilty.” The State now appeals to the Georgia Supreme Court.

ARGUMENTS: The Office of the Solicitor General in Macon, representing the State, argues the Court of Appeals decision “ignores the plain language and intent” of § 16-7-21(b) (2) by reading an additional element requiring *express* notice into the statute. This “stands against strong public policy regarding the sanctity of a person’s home, and makes it an outlier of comparable law,” the attorneys argue in briefs. The Court of Appeals held that to be found guilty of violating the statute, there needs to be proof that the accused entered without having received *express* notice that the entry was forbidden, and that the home’s locked door was insufficient notice. “If one’s home is their castle, then breaching the castle by means of entry through a locked door ought to be a trespass by any definition,” the attorneys argue. “You can ask any child what a locked door means and they will tell you that it means you cannot go in.” The cases on which the Court of Appeals depends deal with entry into places that were not locked, the attorneys point out. By locking the door to her residence, McDaniel, like any homeowner, “places any and all trespassers on reasonable and explicit notice that entry is prohibited.” This decision “demonstrates a fundamental confusion between *reasonable* and *explicit* notice and the *express* notice required by the Court of Appeals.” “Reasonable and explicit” means “leaving no question as to the meaning or intent.” “Express,” on the other hand, means “directly, firmly, and explicitly stated,” and requires the additional element of stating that entry is forbidden instead of recognizing that reasonable and explicit notice can be provided in several forms, such as a home’s locked door. Courts in other states “recognize that locked doors provide notice that entry is forbidden.”

Harper’s attorney argues that Harper was authorized to enter McDaniel’s home to apprehend a fugitive. “The American system of bail, and the right of bounty hunters to search for and arrest criminal defendants, descends directly from the English common law,” the attorney argues in briefs. “Bail recovery agents also enjoy broader arrest powers than ordinary citizens making a ‘citizen’s arrest,’ and it is these powers of apprehension that provide Mr. Harper with the authority that precludes any criminal trespass charge in this case.” In Georgia, two statutes support the proposition that bail bondsmen have the authority to enter property to seize a defendant: Georgia Code § 17-6-58 (d), which states that bail bond recovery agents are liable for civil damages only for entering the **wrong property**; and § 17-4-3, which states that an officer

“may break open the door of **any house** where the offender is concealed.” Under § 17-6-58 (d), a bail recovery agent is not liable for property damage occurring when he has entered the **right property**, as Harper did. “Mr. Harper respectfully submits that under Georgia law, he cannot be criminally liable for trespass when he has entered a property on which the fugitive defendant is actually concealed and apprehends that fugitive there.” And, under § 17-4-3, bail recovery agents are authorized to enter “any house” where a fugitive is concealed. Nothing in the statute limits the authority to make an arrest to the residence of the person being apprehended. Other states, such as Washington, Ohio and Alabama, have recognized “a bail recovery agent’s common law authority to enter third-party residences to apprehend fugitives concealed inside,” Harper’s attorney argues. Also, the State failed to prove that Harper acted “knowingly” with the required criminal intent to prove criminal trespass. “Even if Harper did not actually have the legal right to enter McDaniel’s garage, he plainly and reasonably **believed** he was acting under his authority as a bail bondsman to apprehend a concealed fugitive,” his attorney argues. Finally, the pet door “did not constitute sufficient notice that Harper’s entry was forbidden. Express notice is required and the ‘doggy door’ is not express notice.” In its 1983 decision in *Rayburn v. State*, the Georgia Supreme Court ruled that, “Notice is an essential element of the offense of criminal trespass, and must be proven by the State beyond a reasonable doubt at trial.”

Attorneys for Appellant (State): Rebecca Grist, Solicitor-General, Sharell Lewis, Chief Asst. S.G., Donyale Leslie, Asst, S.G.

Attorney for Appellee (Harper): Andrew Hall

NORWOOD V. THE STATE (S17A1354)

A young woman who lived with her parents and sisters in **Clarke County** and gave birth to a healthy baby boy at home after denying she was pregnant is appealing her murder conviction and life prison sentence for stabbing the newborn to death.

FACTS: Cassandra Norwood lived in Athens, GA, with her parents and two sisters, Ginger and Bethany, a nurse. The morning of Nov. 1, 2012, Ginger went to her sister’s bedroom looking for a pair of shoes and noticed blood on the floor. Ginger told her mother and sister she thought something was wrong, and when Bethany went to Cassandra’s room, she saw dried blood on Cassandra’s foot and on the floor. Cassandra said that she was just having a heavy menstrual cycle, but Bethany was skeptical. When Bethany noticed a trash bag on the floor by the foot of the bed with her comforter in it, she reached for it, but Cassandra grabbed the bag away from her. Cassandra’s parents came into the room and deciding that Cassandra needed medical help, they took her to Athens Regional Medical Center. After they left, Bethany opened the bag where she discovered a baby boy and the placenta. The infant was wounded in his abdomen and neck. Bethany immediately started CPR on the baby and told Ginger to call 911. When police arrived shortly after receiving the 12:45 p.m. call, Bethany showed them the infant partially wrapped in sheets inside a plastic bag. The baby boy was dead. His umbilical cord had been cut roughly seven inches from his body. He had more than 10 sharp force injuries to his neck and more than nine sharp force injuries to his torso. Most significantly, he had a large stab wound to his jugular vein and a stab wound to his torso that had pierced his liver, according to the autopsy, which also revealed the baby had been born alive. A search warrant for the Norwood home was executed and investigators found blood in the bathroom and blood transfer stains on the walls. They found a large, 10-inch kitchen knife under some bedding with blood

stains. Another pocketknife with a small blade had been found under the baby's legs. Cleaning supplies were also found in the bathroom.

At about 5 p.m. that day, Officer Jonathan Patterson went to the hospital where Cassandra was being treated and asked her what had happened. She said she had known for some time she was pregnant and had started having pains the previous night. When she knew the baby was coming, she went into the kitchen to get a knife to cut the umbilical cord. After delivering the child, she said she moved the knife back and forth trying to cut the umbilical cord and must have accidentally cut the baby's neck. She said the baby made a facial expression and a noise when he was cut. She said she then put blankets on his neck to try to stop the bleeding. She did not tell her parents or sisters she had given birth or that the infant was in the house before her parents took her to the hospital.

Later that evening, Detective Richard Boyle went to the hospital with an arrest warrant and Cassandra was charged with murder. After Boyle advised her of her *Miranda* rights, she agreed to talk without having an attorney present. Her account was similar to what she had told Officer Patterson.

Following a May 2014 trial, the jury found Cassandra Norwood guilty of malice murder, felony murder, aggravated assault family violence, and three counts of possession of a knife during the commission of a crime. She was sentenced to life plus five years in prison. She now appeals to the Georgia Supreme Court.

ARGUMENTS: Norwood's attorney argues the trial court erred by allowing in as evidence the statements she voluntarily made both before and after her arrest. Her conviction must be reversed because she was not read her *Miranda* rights until she was formally arrested by Detective Boyle. Yet "she was effectively in custody" when she was interviewed earlier by Officer Patterson who clearly considered her a suspect. But he did not inform her of her rights before questioning her. (*Miranda* rights include: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.") The statements Norwood made to Officer Patterson and Detective Boyle were almost identical and the time lapse between the two interrogations was very small. This Court ruled in 2007 in *State v. Pye* that such integrated two-stage questioning is unlawful and the statements must be suppressed. In the *Pye* case, police interviewed a defendant without reading him his rights, then had him repeat his statements on tape after reading him his rights. The trial court also erred in admitting Norwood's statements to Detective Boyle after she was arrested "because she was not fully informed of her *Miranda* rights, thereby not making her incriminating statements freely and voluntarily," the attorney argues. Officer Boyle "failed to read a critical portion of the *Miranda* warnings as required by law. He failed to tell the defendant after her arrest that, 'You can decide at any time to exercise these rights and not answer any questions or make any statements.'" In this case, Norwood "was not aware that she could exercise her right to not answer any questions," her attorney argues. Detective Boyle failed to advise her that she could stop the interview at any time and invoke her right to silence. As a result, her statements to him were not knowingly and voluntarily made.

The State, represented by the District Attorney's and Attorney General's offices, argues that Norwood's statements to Officer Patterson were properly admitted as evidence because she was not in custody at the time she spoke to him and therefore *Miranda* warnings were not required. The trial court correctly found that Norwood did not reasonably believe she was in

custody when she spoke to Officer Patterson. The evidence at trial showed that on the day of the crime, the officer was instructed to go to the hospital because no one had yet spoken to Norwood and at the time, “police did not have a clear picture of what happened.” He did not tell her at any time that she was in custody or that she was a suspect. Once he completed interviewing her, he told hospital personnel that Norwood could check herself out whenever she chose and that they did not need to call him if she decided to leave. At the time, Officer Patterson had no intention of arresting Norwood, “and a reasonable person in her situation would not have felt in custody,” the State contends. As to the *Pye* decision, contrary to Norwood’s contention, “a significant intervening period occurred between the interviews” and they were “conducted by different detectives in a medical facility rendering treatment.” She was not asked to repeat the previous admission in any kind of inappropriate two-stage questioning technique. In response to Norwood’s second argument, she received the required *Miranda* warnings. “For a statement to be voluntary, the arresting authorities are not required to advise a suspect in custody that she has the right to stop the questioning at any time,” the State argues. Norwood’s attorney failed to cite any legal authority “for the proposition that this particular principle is a specific requirement of a rendition of the *Miranda* warnings.”

Attorney for Appellant (Norwood): Jackie Patterson

Attorneys for Appellee (State): Kenneth Mauldin, District Attorney, David Lock, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Elizabeth Haase

ARNOLD V. THE STATE (S17A1041)

A young man is appealing his murder conviction in **DeKalb County** for killing a man, arguing that he shot the man in self-defense and that the State failed to prove otherwise.

FACTS: In 2014, Joseph Arnold was living at his mother’s home on Misty Valley Drive in Decatur. In the early morning hours of July 10, 2014, he and his friend, Ms. Shuntavius Chandler, left a gathering of friends to buy beer at a nearby gas station. While there, they ran into Gerald Osborne who was with a young woman named Ira. Initially, Arnold and Osborne had a friendly exchange. But according to both prosecutors and the defense attorney, the two had had a disagreement about Ira a month earlier, and at the gas station Osborne increasingly became agitated. As Arnold and Chandler returned to their car, Osborne threatened to “wet the car up,” meaning he would shoot Arnold and his car. Less than five minutes after Arnold and Chandler arrived back home, Osborne arrived, driving his girlfriend’s car. Osborne got out of the car and started yelling and cursing at Arnold. Arnold ordered Osborne to leave, but Osborne refused. While they were arguing, Arnold’s brother, Jamal Arnold, came outside and stood behind Joseph brandishing a shotgun. Osborne then turned toward the car and, according to Arnold who later testified in his own defense, grabbed a gun from the car. Osborne’s girlfriend later testified she kept a .380 semi-automatic pistol between the seat and armrest or in the door. Upon seeing the gun, Arnold said he pulled two handguns from his back pockets and shot Osborne, hitting him three times. Arnold testified that Osborne never shot back. Osborne drove away quickly after Arnold shot him, crashing into a ditch nearby, where he was found dead. The medical examiner who responded to the scene found a .380 caliber pistol in the car underneath Osborne’s right thigh. According to Arnold’s attorney, Osborne had a blood alcohol level of .176 – more than twice the legal limit – and cocaine metabolites in his system.

Following Arnold's indictment for malice murder, felony murder, aggravated assault and possession of a firearm during commission of a felony, Arnold's attorney filed a Motion for Immunity from Prosecution on the ground that Arnold had shot Osborne in self-defense. The trial judge denied his motion and the case proceeded to jury trial. At trial, Chandler testified she was 20 feet away when the shooting occurred and she could not see if Osborne had a gun. She said Osborne returned to the car two or three times. Another woman testified she had seen Osborne sitting in his car when he was shot, but she could not see what he was doing nor did she see Osborne in possession of a gun. The jury acquitted Arnold of malice murder, but found him guilty of felony murder and the other charges, and he was sentenced to life in prison plus five years. Arnold now appeals to the state Supreme Court.

ARGUMENTS: Arnold's attorney argues that, "No rational finder of fact could have found beyond a reasonable doubt that the homicide was unlawful, as the State failed to disprove beyond a reasonable doubt that Mr. Arnold acted in self-defense when he shot the decedent." "The fact that the decedent had a firearm within arm's reach when Mr. Arnold shot him is uncontroverted," the attorney argues. "The only physical possibility for the gun to have ended up on the seat underneath the decedent's leg is for the decedent to have taken it out at some point prior to the crash." The fact that the only two eyewitnesses testified they were unable to see Osborne's gun from where they were standing did not contradict Arnold's testimony. The State's theory of motive is contradicted by its own evidence. Although prosecutors argued that Arnold was angry about Osborne's behavior at the gas station and in the front yard of his house, "there was no evidence that Mr. Arnold was angry," his attorney argues. "On the contrary, there was plenty of evidence that the decedent was angry, threatening and confrontational," including security footage from the gas station. As to the State's argument that "common sense" dictates Osborne would not have grabbed a gun while Arnold's brother pointed a shotgun at him is also contrary to the evidence, given Osborne's blood alcohol level and evidence of cocaine in his system. "When a defendant raises an affirmative defense and offers evidence in support thereof, the State has the burden of disproving that defense beyond a reasonable doubt." Here it has failed to do so and the convictions must be reversed. The trial court also erred by denying Arnold's motion for immunity because no evidence countered Arnold's testimony that he acted in self-defense, and because the trial judge unlawfully held that Arnold had a duty to attempt to retreat in order for his shooting of Osborne to be reasonable. "This is not the law," Arnold's attorney argues. "The law in this state is that a person 'has no duty to retreat and has the right to stand his or her ground and use force as provided in said Code sections, including deadly force. The fact that Mr. Arnold did not retreat when the decedent began to act aggressively should have had no bearing whatsoever on the trial court's determination of the reasonableness of his actions.'" Arnold shot Osborne because Osborne reached for the gun inside the car, and both eyewitnesses testified that Osborne returned to the car at the time he was shot. The trial judge also unlawfully restricted Arnold's attorney from questioning prospective jurors during jury selection about any biases they might have regarding "stand your ground" laws. It was error for the judge to, on his own, restrict the attorney's line of questioning about the jurors' familiarity with, and attitudes toward, "stand your ground" laws, particularly in light of the Trayvon Martin case and other high-profile cases covered in the news. Not only was the evidence against Arnold for the crimes insufficient, "the evidence that he acted in self-defense was overwhelming," the attorney argues, and his convictions and sentence must be reversed.

The State, represented by the District Attorney, argues that the “evidence was sufficient to enable a rational trier of fact to find Arnold guilty beyond a reasonable doubt of the crimes for which he was convicted.” “The determination of whether the State met its burden to disprove Arnold’s self-defense claim was for the jury to decide,” the State argues in briefs. “If a defendant cannot meet his burden of proving immunity before trial, he may still pursue an affirmative defense at trial....” Two witnesses testified they never saw the victim with a gun. “Conflicts in the evidence, questions about the credibility of witnesses, and questions about the existence of justification are for the jury to decide.” Likewise, the trial court properly denied Arnold’s motion for immunity because he did not establish by a preponderance of the evidence that he shot the victim in self-defense. Arnold was the only witness who testified that he saw the victim with a gun. The trial judge “further explained that other witnesses testified that they never saw the victim with a gun, they never heard the victim shoot, and that the victim never returned fire,” the State contends. The trial judge did not impermissibly restrict Arnold’s question concerning “stand your ground” laws to the jury panel during voir dire. Here, the judge “legitimately had concerns that the question could stray into impermissible legal areas on which the trial court would instruct the jury at the end of the trial.”

Attorney for Appellant (Arnold): Michael Tarleton

Attorneys for Appellee (State): Sherry Boston, District Attorney, Harry Ruth, Dep. Chief Asst. D.A., Lenny Krick, Asst. D.A.