



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, August 7, 2018

10:00 A.M. Session

DEBELBOT ET AL. V. THE STATE (S18A1073)

A husband and wife are appealing their murder convictions in **Muscogee County** on charges that they killed their 3-day-old baby girl by fracturing her skull.

FACTS: **Ashley and Albert Debelbot** met in Seoul, South Korea while serving in the U.S. Army. Ashley was a sergeant when she met Albert, another soldier in her unit, in the summer of 2007. They started dating and by September, they were engaged and in November 2007, the couple married. Albert received orders transferring him to the Fourth Ranger Battalion School at Fort Benning in Columbus, GA, and not long after, Ashley became pregnant with their first child. On May 29, 2008, she gave birth at Martin Army Hospital to a daughter they named McKenzy. The birth took place without incident, and on May 31, at around 12:30 p.m., the couple took their new healthy infant home. They were the only caretakers of McKenzy and later said she did fine all day. After going to bed, however, they awoke after midnight when one of them had a bad dream. Ashley and Albert then discovered a lump on the baby's forehead. Ashley called the hospital and staff directed her to bring the baby to the hospital. At about 1:30 a.m., the couple returned to the hospital with McKenzy. Hospital staff examined the baby and took x-rays and CT scans. A little more than two hours later, McKenzy was pronounced dead.

A medical examiner for the Georgia Bureau of Investigation (GBI) conducted an autopsy on June 2. She found fractures on both sides of the baby's skull, and her brain was swollen and covered in blood. The medical examiner would later testify that "the autopsy disclosed very severe head trauma." She concluded that McKenzy had died from "blunt force head trauma," specifically "a crushing type of injury." She assigned the manner of death as a homicide, calling it "an intentional act." After the medical examiner reported her findings to the Columbus police, Ashley and Albert Debelbot were arrested. In June 2009, a grand jury indicted both parents for malice murder, felony murder, and cruelty to children in the first degree in connection with the death of McKenzy Debelbot. Albert and Ashley denied any knowledge of how the baby's skull was fractured. But at trial, the State presented testimony from a man Albert had met in jail who said Albert had told him that the night the baby came home, he had gone out to buy crack cocaine and returned to find the baby not moving. Albert told the man that when he asked Ashley what had happened, she told him she had "spanked" the baby.

Following a joint trial, Albert and Ashley were found guilty of all charges and sentenced to life in prison. Both filed motions requesting a new trial. The court held hearings on the motion in 2015 and 2017. During the proceedings, the Debelbots presented four expert witnesses who testified that they believed the baby's injuries were caused by a defect that occurred prior to birth or during her birth. State prosecutors also presented two medical experts who testified in support of the medical examiner's opinion that the injuries to the couple's baby were non-accidental and a homicide. The trial judge determined that the Debelbots' witnesses were not credible and denied their motion for a new trial. They both now appeal to the Georgia Supreme Court.

ARGUMENTS (Albert): Albert's attorneys argue his trial attorney rendered "ineffective assistance of counsel" in violation of his constitutional rights. Among the deficiencies, his attorney failed to investigate the medical evidence or present a medical expert to counter the testimony of the GBI medical examiner. The attorneys also argue the evidence was insufficient to convict Albert, as the State failed to prove that Albert murdered his daughter as a result of his direct actions or as a party to the crime.

In response to Albert's arguments, **the State** – represented by the District Attorney's and Attorney General's offices – argues that Albert's trial attorney did not render constitutionally ineffective assistance. Since it appeared that his lawyer's strategy was to show that Albert did not commit a crime, his not calling a medical expert was not ineffective assistance. And the evidence was sufficient to convict Albert, the State contends. Even in a case involving circumstantial evidence, it is for the jury to determine whether the evidence is sufficient to exclude every reasonable hypothesis except that of guilt.

ARGUMENTS (Ashley): Ashley's attorneys also argue the evidence was insufficient to convict her. There were no eyewitnesses to the blunt force trauma inflicted on the baby, and a jury could not make an inference as to who committed any crimes between Albert and Ashley. Her trial attorney, like Albert's, also rendered constitutionally ineffective assistance when he failed to secure a medical expert for trial as the medical evidence was essential to the defense in this case. The trial court also erred when it failed to instruct the jury on the law regarding "mere presence, mere association, and grave suspicion," her attorneys argue. In order to prove that Ashley was a party to the crime, it had to show a "common criminal intent," but the State failed to meet this burden. It was also error for the State to refuse to disclose the CT scans done of McKenzy, which Ashley's experts later used post-trial to challenge the medical examiner's trial

testimony and to explain an alternate cause of the baby's death – namely a defect that developed in-utero and that was exacerbated during her birth.

In response, **the State** contends the evidence was sufficient to convict Ashley; the trial judge fully and fairly instructed the jury; the prosecution did not withhold evidence, and Ashley failed to show that the State possessed the CT scans; and her trial attorney was effective.

Attorneys for Appellant (Albert): Carrie Sperling, Thomas Flourney, III

Attorneys for Appellant (Ashley): Brandon Bullard, Jimmonique Rodgers, James Bonner, Jr., A. James Anderson, Anna Halsey

Attorneys for Appellee (State): Julia Slater, District Attorney, Sadhana Dailey, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Ashleigh Headrick, Asst. A.G.

GARVIN THE STATE (S18A1112)

In another constitutional challenge of Georgia's implied consent statute, a man arrested in **Clarke County** for drunk driving is appealing a court's ruling that when his case goes to trial, the State may allow in as evidence his refusal to submit to a breath test.

FACTS: On May 19, 2017, Corporal Sean Park of the University of Georgia Police Department pulled over **Leandre Garvin** after he failed to obey a traffic control device in Athens, GA. Upon contact with Garvin, Park smelled alcohol and noticed that Garvin's eyes were bloodshot and glassy. Garvin admitted that he had consumed some alcohol and agreed to a series of field sobriety evaluations. After conducting the evaluations, Park arrested Garvin for Driving Under the Influence of Alcohol and Failure to Obey a Traffic Control Device. After he placed Garvin under arrest, Park read him the "Implied Consent Notice" for suspects 21 and older, then requested a breath test. The notice states: "Georgia law requires you to submit to state-administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. **Your refusal to submit to the required testing may be offered into evidence against you at trial.**" The notice goes on to say that results showing an alcohol concentration of 0.08 grams or more, which is the legal definition of intoxication, could result in a one-year suspension of one's license and driving privileges. It ends with this request: "Will you submit to the state-administered chemical tests of your breath under the implied consent law?" In response, Garvin refused to consent to the state-administered chemical test of his breath. Subsequently, and before his trial, Garvin filed a motion with the State Court of Athens-Clarke County asking the court to suppress the evidence of his refusal to submit to the test. Garvin challenged the admission of his refusal as a violation of his constitutional rights against self-incrimination and protecting due process.

On Dec. 6, 2017, the judge issued an order denying his motion. Garvin now appeals to the state Supreme Court which has agreed to review his case. Specifically, the Court has asked the parties to answer whether, given that the Georgia Constitution preserves the right to refuse to submit to chemical breath tests, "may the State nevertheless introduce into evidence the fact that a defendant declined to submit to a chemical breath test?"

ARGUMENTS: Garvin's attorneys argue the trial court erred in denying his motion to suppress the exercise of his constitutional right against self-incrimination. "The Georgia

constitutional privilege relating to self-incrimination in Paragraph XVI has little, if any, meaning to those suspected of DUI when the government is able to use the exercise of that constitutional right, vis a vis refusing a state-administered breath test, as a self-incriminating statement,” the attorneys argue in briefs. Paragraph XVI of the Georgia Constitution states that, “No person shall be compelled to give testimony tending in any manner to be self-incriminating.” “Appellant [i.e. Garvin] exercised his constitutional right to refuse to provide a state-administered chemical breath test that could have proved incriminating. Admission of that evidence against Appellant, and in favor of the State, would deprive Appellant of any benefit of the privilege, and would render the constitutional right meaningless,” the attorneys argue. Georgia law “cannot constitutionally punish a person for exercising a constitutional right,” the attorneys argue. In its 1978 decision in *Bordenkircher v. Hayes*, the United States Supreme Court stated that, “To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.” And in its 1982 decision in *United States v. Goodwin*, the high court said that, “For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right.”

Georgia courts have long recognized that it is improper to comment on a defendant’s post-arrest silence. “For the same reasons that a suspect in a murder investigation cannot have his or her purposeful decision to refuse to cooperate in a criminal interrogation introduced at the criminal trial, a DUI suspect refusing to make a statement or do an act that might otherwise be incriminating should be similarly inadmissible,” Garvin’s attorneys argue. “Where a witness raises his or her Fifth Amendment privilege prior to being called as a witness, the witness may not be called, nor may the trial court inform the jury that the witness exercised the constitutional privilege.”

The State, represented by the county Office of the Solicitor General, argues the trial court did not err in denying Garvin’s motion to suppress his refusal to submit to the breath test. Paragraph XVI of the Georgia Constitution “only prohibits compelled incriminating testimony, not compelled acts, and as such, a defendant has no constitutional right to refuse a breath test properly requested after arrest for DUI,” the State’s attorneys argue in briefs. In 2017, the Georgia Supreme Court ruled in *Olevik v. State* that Paragraph XVI protects against compelled breath tests and gives individuals a constitutional right to refuse testing. “The State may nevertheless introduce evidence of Appellant’s [i.e. Garvin’s] refusal to submit to a breath test at trial because the Georgia Constitution and the laws of this State do not categorically exclude evidence of such refusals.” “Georgia case law, including *Olevik*, makes clear that the protection of Paragraph XVI only covers *compelled* testimony and acts of the defendant,” the State argues. The initial inquiry then must be whether the defendant has been compelled or forced to produce the evidence at issue. Here, the refusal to submit to a test is not the product of coercion, compulsion or force; rather it is the choice between options provided for by statute, the State contends. “This Honorable Court declared Georgia’s implied consent notice constitutional in *Olevik* after a close examination of the statutory language.” “Even if Paragraph XVI of the Georgia Constitution preserves the right to refuse to submit to chemical breath tests, the State may introduce into evidence the fact that a defendant declined to submit to a breath test,” the State concludes. “This is because the Georgia Constitution and relevant laws of this State do not categorically prohibit the introduction of evidence at trial of a defendant’s refusal to take a State-administered breath test.”

Attorneys for Appellant (Garvin): Jeffrey Rothman, Anna Bolden

Attorneys for Appellee (State): Carroll Chisholm, Jr., William Fleenor, Lucas Cowan

MIZELL V. THE STATE (S18A1029)

A man is appealing his murder conviction in **Fulton County** for the beating death of a woman he had just met.

FACTS: On Oct. 7, 2003, Cassandra Bryant told her longtime friend and roommate Richard Alexander that she had met a person named “Willie” that day at the nearby Essex Courts apartment complex and she planned to go see him that night. **Willie Mizell** was the only tenant living in Building F, other than Willie Lynch, the maintenance supervisor for the apartments for whom Mizell worked. Lynch later testified that on Oct. 7, Mizell had told him while they were working together that he had just met a girl and that she was coming over to his apartment that night. At about 10 that night, Lynch was awakened by a loud noise. Thirty minutes later, he heard someone knocking on his front door. Lynch ignored it, then heard someone knocking on his bedroom window. He got up, pulled the blinds open, and saw Mizell. Mizell, who was sweating and appeared agitated, asked Lynch for \$25. But Lynch had just paid Mizell earlier for the work they had done together, and Mizell eventually left.

The next morning, an apartment resident called police after finding a woman’s body partially concealed by a patch of kudzu next to a dumpster behind Building F. Police responded and found a small, partially nude female, Cassandra Bryant, barely alive. She was so severely beaten that emergency medical technicians could not intubate her due to the damage to her face and jaw. Bryant died shortly after at Grady hospital. The medical examiner noted a total of 48 blunt force trauma injuries to Bryant’s face, head, neck, torso, and extremities; the cause of death was bleeding around the brain due to blunt force injury of the head and neck. She had also been strangled or struck in the neck with sufficient force to fracture her thyroid cartilage.

Inside the dumpster near Mizell’s apartment, detectives found a rolled-up orange towel that contained a blue washcloth, six Doral cigarette butts, two white tennis shoes, and a broken denture. One of the shoes had a red stain that appeared to be blood. Initially Mizell told detectives that he had not seen anything unusual around the complex. After receiving a tip about Mizell, a detective again spoke with him, and Mizell then said he had “handled” and “came in contact” with a bag and some clothing near a dumpster. He led the detective to the dumpster, where detectives recovered a plastic bag with a blue slipper, and a sheet and a woman’s clothing, both of which seemed possibly stained with blood. Mizell then told another detective that he had found the items while cleaning up that morning as part of his maintenance duties, something he had failed to tell detectives earlier that day. A detective then staged a radio call with a colleague, pretending the colleague was the medical examiner who proceeded to tell the detective within earshot that he had found fingerprints on the victim’s skin. The detective later testified that upon hearing that, Mizell was “visibly shaken” and “just froze.” Mizell proceeded to tell detectives that he had been with his girlfriend, Tamika Walton, all night. They later learned from Walton that this was not true.

After initially agreeing to let detectives search his apartment, Mizell changed his mind and told them they would need a search warrant. They got the warrant and upon searching his apartment, found blood stains on the carpet, walls, and linens. Detectives also found a piece of denture that fit “like a piece of a puzzle” with the other recovered piece, and when reassembled,

the two pieces fit the victim's mouth "perfectly." Detectives also found in Mizell's apartment a blue slipper that matched the one found in the dumpster. Mizell was then placed under arrest. At his trial, the jury heard that blood from the carpet in Mizell's apartment came from the victim and that the cigarette butts contained DNA from both Mizell and the victim.

Prior to trial, Mizell's attorney filed a motion to suppress the evidence found in his apartment as a result of the Oct. 8, 2003 search warrant. The trial court denied the motion. Following a May 2005 trial, Mizell was found guilty of malice murder, felony murder, aggravated assault, and concealing the death of another. In March 2010, a different judge – Judge Marvin Arrington – granted Mizell's motion requesting a new trial, finding that the State had failed to comply with an order to test potentially "exculpatory evidence" – or evidence that tended to establish Mizell's innocence. The judge then dismissed the charges against Mizell as a sanction against the State for acting in bad faith. The State appealed to the Georgia Supreme Court, which in January 2010, reversed the trial court's ruling and reinstated the charges. Following a second trial in July 2014, Mizell again was found guilty. He was sentenced to life plus 10 years in prison and again appeals to the state Supreme Court.

ARGUMENTS: Mizell's attorney argues that the trial court erred in denying Mizell's motion to suppress the evidence found as a result of the search of his apartment. There was not a basis for concluding that probable cause existed to issue the search warrant. "First, the police had scant evidence that Mizell was involved," the attorney argues in briefs. "When the search warrant was issued and later executed, the detectives did not know where any of the recovered items had come from, who they belonged to, or if the red stains were blood. The detectives did not know if they were even related to the homicide." Furthermore, the significance of the fact that Mizell waited to tell the police about finding the bloody sheet and other items was overblown by the detectives, given that Mizell regularly picks up trash around the complex as part of his job. Also, there was "no evidence that linked the cigarette found in the orange towel to Mizell, other than it was the same brand that he smokes." "Second, the affidavit to the search warrant did not establish probable cause," the attorney argues. "That the victim's body was found outside Mizell's apartment building says nothing about Mizell – especially considering that the police found evidence of the crime at the opposite end of the apartment complex as well." "Third, the detectives' stated reason for wanting to search his apartment reveals that there was no nexus between the evidence and Mizell's apartment."

The State, represented by the District Attorney's and Attorney General's offices, argues that the trial court properly denied Mizell's motion to suppress the search of his apartment, as the search warrant was supported by probable cause. "The deference shown a magistrate's finding of probable cause is such that even doubtful cases should be resolved in favor of the magistrate's grant of a warrant," the State's attorneys argue in briefs. "The evidence in this case was far greater than 'doubtful' or 'marginal' and sufficient to establish a 'fair probability' that the specific items of evidence listed in the affidavit would be found in Appellant's [i.e. Mizell's] apartment. Appellant's withholding of information without apparent reason, the fact that he smoked a specific brand of cigarettes, and the proximity of his front door to the victim's body all combined to establish a substantial basis for the finding of probable cause." The trial court's ruling was not error, and this Court should uphold it, the State urges.

Attorney for Appellant (Mizell): Ryan Locke

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., F. McDonald Wakeford, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Youn, Asst. A.G.