



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

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Thursday, November 8, 2018

Special Session

Albany State University

Billy C. Black Auditorium

Albany, Georgia

10:30 A.M. Session

JAMES CHAPPUIS ET AL. V. ORTHO SPORT & SPINE PHYSICIANS SAVANNAH, LLC (S18G0756)

The appeal in this **Fulton County** case stems from a lawsuit between two physicians and former partners in which one alleges the other harassed and stalked him and his employees.

FACTS: **Dr. James Chappuis** and Dr. Armin Oskouei were previously partners in a medical practice and surgery center in Atlanta, GA. However, their professional relationship ended in extreme acrimony, with Oskouei alleging that Chappuis became angered by Oskouei's departure from their practice, threatened to kill Oskouei, and hired people to stalk Oskouei and his staff. Litigation ensued that was eventually settled, and Oskouei subsequently moved to Savannah, GA where he started **Ortho Sport & Spine Physicians Savannah, LLC**. About one year later, in July 2015, Chappuis Properties, LLC, a company allegedly controlled by Dr. Chappuis, purchased the building in Savannah where Ortho Sport Savannah leased space as one

of only two tenants. Around the same time, incidents began occurring that were “reminiscent of the harassing behavior which was well-documented and admitted” in the previous lawsuit. Ortho Sport Savannah alleged in its complaint that explicit racial epithets appeared on Dr. Oskouei’s windshield, “suspicious individuals” frequented its lobby, individuals attempted to solicit its patients or advise them to use a different doctor, persons stalked and followed Dr. Oskouei, and Chappuis Properties refused to accept Ortho Sport Savannah’s lease payments. Based on fear for the safety of its staff and patients and the disruption of its business, Ortho Sport Savannah vacated the property.

After leaving the building in Savannah, in August 2015, Ortho Sport Savannah sued Dr. Chappuis, Chappuis Properties, and Chappuis’s Atlanta medical practice (Orthopaedic & Spine Surgery of Atlanta, LLC), as well as one of its employees, Jordan Strudthoff. The complaint asserted numerous complaints against “the defendants,” including slander, trespass, conspiracy, and interference with a business relationship. Overall, the complaint alleged that the “Defendants have acted together in a systematic fashion with a deliberate attempt to destroy Ortho Sport Savannah’s business, as an end in and of itself, as well as for the pecuniary benefit of the Defendants.” It sought punitive damages against all the defendants as well as attorney fees and expenses of the litigation.

At issue in this appeal are some of the accusations Ortho Sport Savannah alleged in its complaint about Dr. Chappuis, including that he has a history of drug use, is “a known racist,” abuses alcohol or other substances, boasts about hiring prostitutes, has a “propensity for violence,” and is “of Italian decent [sic].” On Aug. 20, 2015, Chappuis filed a motion to strike a number of the allegations, citing Georgia Code § 9-11-12 (f), which states that “the court may order stricken from any pleading any insufficient defense or any **redundant, immaterial, impertinent, or scandalous matter.**” Strudthoff also filed a motion to dismiss the complaint against him on the ground that it failed to allege any facts specific to him. The trial court granted Chappuis’ motion to strike and struck 15 paragraphs in all. It also granted Strudthoff’s motion to dismiss.

On appeal, the Georgia Court of Appeals, which is the state’s intermediate appellate court, affirmed part of the trial court’s ruling and reversed part of it. It upheld the trial court’s order striking the allegations of Chappuis’ drug use, hiring of prostitutes, and alcohol and substance abuse. But it reversed the remainder of the trial court’s decision on the Motion to Strike, ruling that it could not say that “these matters ‘can have no possible bearing upon the subject matter of this litigation.’”

Prior to trial, Chappuis now appeals to the Georgia Supreme Court, which has agreed to review the case to determine whether the Court of Appeals erred “in its review of the trial court’s decision to strike ‘any scandalous matter’ from Ortho Sport Savannah’s complaint.”

ARGUMENTS: Attorneys for Chappuis and his companies argue that the trial court correctly applied the four-pronged standard enumerated in Georgia statute 9-11-12 (f) by striking from Ortho Sport Savannah’s complaint “any redundant, immaterial, impertinent, or scandalous matter.” “However, the Georgia Court of Appeals rewrote this clear statutory language and instead invented a test under which material is stricken only when the information ‘can have no possible bearing upon the subject matter of the litigation,’” the attorneys argue in briefs. The Court of Appeals erred in ignoring the clear language of the statute and inventing a “new test” that does not appear in the statute. “This novel standard directly contravenes Georgia cases

holding that courts ‘must presume that the General Assembly meant what it said and said what it meant’ and renders many of the four prongs, such as the ‘scandalous’ prong, superfluous.” With this decision, the Court of Appeals has lowered the standard for a motion to strike in Georgia, the attorneys argue. This Court should take the opportunity to confirm that Georgia courts should analyze all four prongs set forth in § 9-11-12 (f). The attorneys argue the high court should reverse the Court of Appeals’ decision and uphold the trial court’s striking of a number of paragraphs. “The trial court did not abuse its discretion in holding that the series of personal attacks contained in these paragraphs were redundant, immaterial, impertinent, or scandalous,” Chappuis’s attorneys argue.

Attorneys for Ortho Sport Savannah argue that contrary to the appellants’ (i.e. Chappuis’s and his companies’) characterization, “the Court of Appeals did not ‘invent’ a new test, but has consistently applied the same law for almost half a century.” For nearly 50 years, “Georgia courts have elucidated the fact that motions to strike are not favored and should not be granted if the matter can have a ‘possible bearing upon the subject matter of the litigation’ – or, in other words, can possibly be relevant.” In this case, the underlying facts and context “are not only relevant, but are absolutely critical for the Appellee’s (i.e. Ortho Sport Savannah’s) claim,” the attorneys argue in briefs. “The previous Atlanta litigation, which was settled only about a year prior to Dr. Chappuis engaging in the conduct that gives rise to the underlying complaint, was a big deal. It involved seven separate lawsuits filed in the metro Atlanta area; law enforcement became involved after stalkers impersonated police officers and death threats were made; Dr. Oskouei was forced to leave his home and move his family to an undisclosed location.” “The fact that a former business partner would spend several million dollars to purchase the ex-partner’s commercial building, 300 miles away, is almost unfathomable to an ordinary reasonable person,” the attorneys argue. “The history and background is necessary because a) it demonstrates that the conduct is by the same individual (e.g., the same offensive racist phrases are being used, the same sexual paraphernalia paraded around is being left on company vehicles, the same threats are being made, etc.), b) it demonstrates that the situation and threats are to be taken seriously, and c) it supports necessarily elements of the underlying causes of action.” Chappuis is asking this Court “to eviscerate almost half a century of precedent, reinterpret the statute to result in absurdity, and invite a flurry of unnecessary requests to strike pleadings that will frustrate judicial economy,” the attorneys argue. This Court should uphold the Court of Appeals ruling.

Attorneys for Appellants (Chappuis): Thurbert baker, Mark Trigg, Mark Silver

Attorneys for Appellee (Ortho Sport): Yasha Heidari, Yennifer Delgado

CROUCH V. THE STATE (S18A1610)

In this case involving a double murder in **Houston County**, a young man is appealing the convictions and life prison sentence he received for his role in the killings.

FACTS: Coleman Crouch, 21, lived in a house in Warner Robins, GA, with a roommate and his roommate’s girlfriend. According to the facts at trial, Crouch, who worked at his father’s pawn shop, also sold drugs for Ruben Miranda. In January 2013, Miranda made a deal with Crouch to pick up a half-kilo of cocaine in Atlanta and bring it back to Macon for Miranda to sell. On the way back to Macon, Crouch ran into a roadblock and in his panic, tossed

the package of cocaine out the window to avoid detection. When Crouch returned to retrieve the drug later that night, it was gone. Crouch told Miranda he had lost the cocaine, and Miranda told him it would cost him \$15,000, which was the missing drug's approximate value.

On Aug. 18, 2013, Crouch told his friend, Thomas Kelly, and Kelly's fiancée, Kristen Beuthin, that he wanted to "get rid of" Miranda so he would not have to pay him the debt he owed. Kelly and Crouch discussed burying the body on Kelly's family property at Vinson Valley in Houston County. Crouch then devised a plan of how they would kill Miranda. Crouch would lure Miranda to his house under the pretense of giving him guns to satisfy the debt. Crouch would walk into the house with Miranda behind him and Kelly behind Miranda. Crouch would then go upstairs under the pretext of retrieving firearms for settling his debt, and Kelly would shoot Miranda in the back of the head. Crouch and Kelly would then dispose of the body.

At Crouch's direction, Kelly and Beuthin went to a Walmart and purchased a tarp to use in disposing of Miranda's body. When they returned, however, Beuthin told Crouch that she and Kelly no longer wanted to be involved in the plot. According to later testimony, Crouch slammed down his fist and demanded that the killing be done that day. Crouch then called another friend, Justice Evans, and told him he wanted to see him, but would need him only "if something goes wrong." Evans agreed and along with his girlfriend, met Crouch, Kelly, and Beuthin at a gas station and followed them back to Crouch's house.

That evening, Crouch and Kelly left the house together and later returned with Miranda, who brought another man, Shaland McConnell, with him. While the two women remained outside, the men went inside where events unfolded as planned. McConnell sat on a couch, Kelly paced, and Evans sat in a chair while Crouch and Miranda talked about firearms. Crouch showed Miranda some guns, but Miranda initially expressed displeasure with what he was seeing. So Crouch went upstairs to his room ostensibly to retrieve more firearms. As Crouch came back down the stairs, Kelly shot both Miranda and McConnell several times, killing them. Crouch checked the victims' pockets, got their phones and identification, and told Kelly and Evans to clean the place. The three men then dragged the victims' bodies downstairs to the garage and put them in the back of Kelly's truck, placing the tarp on top. Kelly drove off with the bodies, while the other four – Crouch, Beuthin, Evans, and his girlfriend – remained home and cleaned. At Crouch's instruction, at one point the two women went to the store and purchased bleach before resuming cleaning. Crouch and Evans later left with a garbage can that included the used cleaning items and met Kelly at his family's property in Vinson Valley. The three then rode in Kelly's truck farther back into the woods, dragged the bodies off the truck, and left them under the tarp, along with the trash.

The morning of Aug. 19, Crouch's roommate and his girlfriend returned home from a weekend away. Upon entering, they noticed a strong odor of bleach, bullet holes in the walls, and a table out of place. Crouch told his roommate that Kelly had shot Miranda and McConnell in "a gun deal gone wrong." His roommate then contacted the Houston County Sheriff's Office and reported the killings.

Crouch was arrested and although he initially denied that a shooting had occurred in his home, he eventually admitted the shooting but placed the blame entirely on Kelly. He also led authorities to the bodies where officers also found the trash can and duffle bags filled with blood and bleach stained clothing, two .45 caliber shell casings, rubber gloves, and cell phone batteries.

Kelly told law enforcement officers that Crouch had directed him to kill Miranda and McConnell. He and Beuthin said Crouch had also sent them to Walmart to obtain the tarp.

In March 2015, Crouch was charged in an eight-count indictment with two counts each of malice murder, felony murder, aggravated assault, and concealing the deaths of Miranda and McConnell. The indictment also charged Kelly, his fiancée Beuthin, and Evans with the same crimes and Evans' girlfriend with concealing the deaths. Prior to Crouch's trial, Kelly pleaded guilty to two counts of malice murder and was sentenced to life plus 10 years in prison. The remaining co-defendants also pleaded prior to trial. At Crouch's trial, Beuthin testified that it was Crouch's idea and plan for Kelly to kill Miranda.

Following a June 2016 trial, the jury found Crouch guilty on all counts, and he was sentenced to life plus 20 years in prison. Crouch now appeals to the Georgia Supreme Court.

ARGUMENTS: Crouch's attorneys argue the trial court abused its discretion by prohibiting Crouch from introducing evidence of Kelly's psychotic mental state and delusional thinking at the time of the shootings. They say that the evidence was pivotal to Crouch's defense and prohibiting its admission violated his constitutional rights to due process and a fair trial. Crouch's sole defense was that he never instructed or asked Kelly to kill Ruben Miranda or Shaland McConnell but that Kelly had shot the two men on his own. Kelly had extensive mental health issues: he had been diagnosed as bipolar, recently lost his father to suicide, and suffered from delusions, including "that he had to kill Miranda or Miranda was going to defile and kill" Crouch's family. In addition, Crouch's trial attorney was ineffective on a number of grounds in violation of his constitutional rights. Among the failures, his attorney failed to establish the relevance of Kelly's psychological issues and the necessity of the evidence to his client's defense, the attorneys contend. "This case is about a troubled teenager with a long history of psychological and mental health problems, who was having delusional thoughts when he shot and killed two people, using the same gun that his own father had used to commit suicide," Crouch's attorneys argue in briefs. "That troubled young man was not Appellant Cole Crouch; it was his friend and co-defendant Thomas Kelly." Kelly admitted he had killed the two men. "Unfortunately for Cole Crouch, the jury was not permitted to hear any evidence regarding Kelly's diagnosed mental disorders, his long history of psychiatric treatment, or his delusional and psychotic mental state immediately prior to the shootings," Crouch's attorneys argue.

The State, represented by the District Attorney's and Attorney General's offices, argues the trial court did not abuse its discretion in limiting the scope of "Appellant's," i.e. Crouch's, cross-examination of Kelly "because Kelly's alleged mental health disorder was not relevant as a defense to Appellant's planning and participation in the murders." Crouch was "a party to the crime and was equally, if not more, culpable," the State's attorneys argue in briefs. "The evidence at trial was undisputed that co-defendant Thomas Kelly was the person who fired the shots that killed Ruben Miranda and Shaland McConnell. However, there was more than sufficient evidence to show that Appellant Crouch planned the murder, involved and directed Kelly to shoot the victims, and then directed Kelly to assist him in destroying evidence and disposing of the bodies." None of the evidence of Kelly's alleged mental health issues would have absolved Crouch "of the fact that the reason the murders took place in the first part was because he planned the whole killing and got Kelly and others to help him carry it out," the State argues. The trial court also properly determined that Crouch's trial attorney was not ineffective.

“His performance was not deficient and there was no prejudice to his case due to that performance,” the State contends.

Attorneys for Appellant (Crouch): Laura Hogue, Susan Raymond

Attorneys for Appellee (State): George Hartwig III, District Attorney, Daniel Bibler, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.