



Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Wednesday, March 20, 2019

10:00 A.M. Session

CARPENTER V. THE STATE (S19A0439)

A young man convicted of murder is appealing his convictions and life prison sentence for killing another young man in **DeKalb County** during what had been set up as a marijuana sale.

FACTS: According to the State's case at trial, on Aug. 11, 2016, 18-year-old **Benjamin Carpenter**, who at the time attended Decatur High School, was hanging out with his friends, Tyler Wofford and 15-year-old Christian Hernandez at an abandoned house on LaVista Road they called the "bando." The three were smoking marijuana and when they ran out, Hernandez used Wofford's phone to call Lucio "Geo" Vasquez and ask if they could purchase some marijuana. Hernandez, who had purchased the drug before from Vasquez, told him to meet them down the street at the Sloan Square Apartments. Carpenter suggested they rob Vasquez of the drug instead of paying him \$30, and Hernandez and Wofford agreed. Carpenter then pulled three guns from a book bag he had at the "bando" and armed himself and his friends, giving Hernandez and Wofford each a .38 caliber gun while he carried a .25 caliber gun. The three then set out on foot for the Sloan Square Apartments.

Vasquez, meantime, had been spending the day with his longtime girlfriend, Marina Hemmen, when he got the call from Hernandez asking to purchase marijuana. She then drove

Vasquez in her parents' car to the apartments. When they arrived, Carpenter and Hernandez approached the car, telling them "it's hot out here," meaning that bystanders were watching, and they got into the back seat of Hemmen's vehicle. Carpenter sat behind Hemmen, who was in the driver's seat, and Hernandez sat behind Vasquez, who was in the front passenger seat. Wofford did not get into the car but stood nearby. Hemmen later said she knew Hernandez from high school but did not know "the white guy" who sat behind her.

According to prosecutors, almost immediately upon getting into the car, Carpenter took out his handgun and pointed it at Vasquez. When Vasquez turned around to give Carpenter the marijuana and saw the gun, he screamed and lunged toward the back seat to get it away. Hemmen later said that Hernandez moved toward the window with a shocked look on his face as if he "didn't expect this to go down like this." She saw Carpenter and Vasquez struggle over the gun, then heard two shots. Vasquez slumped back into his seat, and Carpenter and Hernandez jumped from the vehicle and ran. Hemmen drove Vasquez directly to Emory Hospital, but he was pronounced dead on arrival from gunshots to his head and chest. Hemmen later said Hernandez had never pulled a weapon. Following the shooting, the three young men ran back to the abandoned house. Carpenter told Wofford to get rid of his cell phone, but Wofford refused. Carpenter then called an Uber, and he and Hernandez left the "bando." Later that night, Carpenter sold his .25 caliber gun to an unknown person.

After Hemmen helped police identify Hernandez, he was located and eventually cooperated with police. Carpenter's DNA was discovered in the back seat of Hemmen's car, and bullet fragments collected at the scene were consistent with having been fired from a .25 caliber gun like Carpenter's. Phone records showed that Wofford's phone had been used to call and text Vasquez to set up the drug deal. Carpenter and Hernandez were charged with malice murder, two counts of felony murder, aggravated assault, attempted armed robbery, and possession of a firearm during commission of a felony. Hernandez entered a plea bargain and pleaded guilty to the lesser charge of voluntary manslaughter and the firearm charge in exchange for a lighter sentence, and he agreed to testify for the State at Carpenter's trial.

Following a May 2017 trial, the jury convicted Carpenter of felony murder while in the commission of criminal attempt to commit armed robbery. He was also convicted of attempted armed robbery and the firearm charge, but he was acquitted of the other charges. He was sentenced to life plus five years in prison and now appeals to the Georgia Supreme Court.

ARGUMENTS: Carpenter's attorneys argue his convictions should be reversed and he should be given a new term because he was wrongly denied his right to adequately cross-examine Hernandez regarding Hernandez's "modus operandi to kill innocent, unsuspecting people." Georgia Code § 24-4-404 (b) states that, "Evidence of other crimes, wrongs or acts shall not be admissible to prove the character of a person in order to show action in conformity therewith," but may be admissible to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Here, Carpenter's attorneys sought to ask Hernandez, the State's "star witness," about "bad acts" he had committed previously, including breaking into homes and cars to commit theft. In one home, he threatened the life of the owner after the owner confronted and tackled him. According to Carpenter's attorneys, the prior acts were admissible because they showed that Hernandez had a "homicidal proclivity" and was motivated to hurt people out of "retribution," both of which went to the motive in Vasquez's murder. The trial court also erred in its instruction to the jury about the law of conspiracy, the

attorneys contend. In charging the jury, the trial judge said that “a conspiracy is an agreement between two or more persons to do an unlawful act and...When persons associate themselves in an unlawful enterprise, any act done by any party to the conspiracy to further the unlawful enterprise is considered to be the act of all the conspirators.” This charge was “misleading and harmful,” the attorneys argue. Finally, Carpenter’s attorneys argue that the prosecution “intentionally violated the trial court’s order not to introduce any evidence that appellant [i.e. Carpenter] supposedly committed thefts of firearms prior to this killing.”

The State, represented by the offices of the District Attorney and Attorney General, argues that evidence that Hernandez had threatened to kill a homeowner who had tackled him was not admissible to show motive in this case. There was no evidence that Vasquez was killed out of “retribution.” Furthermore, Carpenter’s attorney at trial argued that Hernandez was so “dark and evil,” he killed Vasquez “for nothing,” not out of retribution. There was a motive in the threat against the homeowner, so it would not show that Hernandez threatened people for no reason, the State contends. Also, the trial judge properly instructed the jury on conspiracy as it related to culpability as a party to a crime. “It is not error to charge on the subject of conspiracy when the evidence tends to show a conspiracy, even if a conspiracy is not alleged in the indictment,” the State argues, and “Whether a conspiracy exists is a question for the jury to determine.” Finally, the “agreement” discussed between the State and Carpenter’s attorneys at the pre-trial hearing was that the State would not introduce evidence that at the time of his arrest, Carpenter possessed stolen guns unrelated to the crime charged in the indictment. The State abided by that agreement.

Attorneys for Appellant (Carpenter): Brian Steel, Donald Samuel

Attorneys for Appellee (State): Sherry Boston, District Attorney, Peter Johnson, Chief Asst. D.A., Emily Richardson, Dep. Chief Asst. D.A.

GEORGIA DEPARTMENT OF LABOR V. MCCONNELL ET AL. (S18G1316)

MCCONNELL ET AL. V. GEORGIA DEPARTMENT OF LABOR (S18G1317)

These related appeals stem from a man’s class action lawsuit against the **Georgia Department of Labor** for inadvertently releasing to the public his and others’ personal identifying information. This is the second time this case has come to this Court.

FACTS: In September 2012, the state 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 **Fulton, Cobb, and Cherokee counties**. Among them was **Thomas McConnell**. 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. McConnell, whose information was on the spreadsheet, was so concerned about identity theft that he enrolled in an identity protection service for \$19 a month.

In January 2014, McConnell filed a class action lawsuit against the Department, claiming negligence, breach of fiduciary duty, and invasion of privacy. 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. Others whose information had been disclosed also incurred out-of-pocket costs related to credit monitoring and identity protection services and

suffered adverse impacts to their credit scores related to the closure of their credit accounts, as well as anxiety over possible identity theft.

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. In October 2015, the Cobb County Superior Court granted the Department’s motion and dismissed the case, ruling that “sovereign immunity” barred the claims in the lawsuit. (Sovereign immunity is the legal doctrine that protects the government and its departments from being sued without the government’s consent.) The trial court ruled that sovereign immunity barred the claims because the Georgia Tort Claims Act (Georgia Code §50-21-20 et seq.) did not waive the State’s immunity for the type of “loss” that McConnell claimed. In addition, the trial court held that each count of the complaint failed to state a claim.

McConnell appealed to the Georgia Court of Appeals, which upheld the lower court’s ruling, but it only addressed the trial court’s ruling that each count of the complaint failed to state a claim. 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 appellate 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 based on judicial opinions as opposed to law based on statutes.) “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 Court of Appeals opinion said. McConnell then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in considering the merits of McConnell’s claims without deciding first whether sovereign immunity barred his claims. The high court held that the appellate court did err in this regard and it vacated the Court of Appeals judgment and sent the case back with direction to make this threshold determination. On remand, the Court of Appeals first held that the trial court erred in concluding that sovereign immunity barred McConnell’s claims. On the merits, the Court of Appeals again ruled that the trial court properly dismissed the lawsuit for failure to state a claim.

Both the Department and McConnell now appeal to the Georgia Supreme Court, which again has agreed to review the case to determine: 1) whether the Court of Appeals erred in ruling that the State’s sovereign immunity was waived under the Georgia Torts Claims Act; and 2) whether the Court of Appeals erred in ruling that McConnell’s complaints failed to state a claim.

ARGUMENTS: The Department, represented by the Attorney General’s office, argues that the Court of Appeals erred in concluding that sovereign immunity has been waived for McConnell’s claims. The Act waives sovereign immunity only to the extent that the plaintiff suffered a “loss,” which the Act defines as: “personal injury; disease; death; damage to tangible property, including lost wages and economic loss to the person who *suffered the injury, disease, or death*; pain and suffering; mental anguish; and any other element of actual damages recoverable in actions for negligence.” Because McConnell did not allege that the Department’s email disclosure caused him to suffer a disease, death, or injury to his person, “The Georgia Torts Claims Act’s definition of ‘loss’ bars McConnell from recovering his alleged economic damages,” the State argues in briefs. The Court of Appeals correctly concluded, however, that

McConnell's claims fail on the merits, the State contends. McConnell failed to state a claim for negligence, which requires the existence of a legal duty, because the Department does not have a legal duty to safeguard personal information. Furthermore, McConnell has not suffered an injury for which damages may be recovered under Georgia law. Although Georgia Code § 10-1-393.8 (a) states that a person, firm, or corporation shall not "publicly post or publicly display in any manner an individual's social security number," "publicly post" and "publicly display mean to *intentionally* communicate or otherwise *make available to the general public*. McConnell did not allege that the Department "intentionally" disclosed his personal information information, but rather that the disclosure was negligent. Nor does Georgia Code § 10-1-910 create a legal duty, the State contends. A claim for breach of fiduciary duty requires a fiduciary duty that arises from a "confidential relationship," which is defined as any relationship where "one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another..." The mere fact that an individual is required to disclose personal information to obtain a service or benefit is not sufficient to establish a confidential relationship, the State contends. Finally, McConnell failed to state a claim for public disclosure of "private embarrassing facts."

Attorneys for McConnell and the others argue that the Court of Appeals correctly ruled that their claims are not barred by sovereign immunity. "The Georgia Torts Claims Act does not bar McConnell from recovering his economic damages," the attorneys argue in briefs. The demand is for money compensation for McConnell's and other proposed class members' losses, including costs for credit protection services. The Department's "narrow" interpretation that McConnell must allege that the disclosure caused him to suffer a "disease, death, or injury to his person" is incorrect, they contend. However, the Court of Appeals did err in concluding that McConnell's claims failed on the merits. In this case, "the key issue for consideration is whether the Department of Labor owed a 'legal duty to conform to a standard of conduct raised by the law for the protection of others against unreasonable risks of harm' regarding the class members," the attorneys argue. "Georgia recognizes a general duty to all the world not to subject them to an unreasonable risk of harm." The Georgia Supreme Court should rule that the Department owed a duty not to disclose McConnell's and others' personal information based on that general duty. As to the breach of fiduciary claim, the Georgia Constitution provides that public officers are trustees, thereby establishing that the State and local government agencies and officers owe a fiduciary duty to Georgia citizens. Duties as trustees are fiduciary duties, and personal information represents personal property of Georgia citizens in the same way that taxpayer funds or real property is property of Georgia citizens. Finally, regarding McConnell's invasion of privacy claim, disclosure of private and personal information to 1,000 individuals certainly constituted "public disclosure," the attorneys argue.

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

Attorneys for McConnell et al.: Scott Schweber, Jefferson Allen