



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT Summaries of Facts and Issues

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Wednesday, April 22, 2020

10:00 A.M. Session

REID V. MORRIS ET AL. (S20A0107)

At issue in this case is whether the law allows a man who was injured in a car crash caused by a drunk driver to sue not only the driver for punitive damages but also the man who entrusted his car to the man allegedly knowing he was drunk.

FACTS: **Alonzo Reid** sued **Lakenin Morris** and **Keith Stroud** in **Spalding County**. Reid alleged that he was injured in a 2016 automobile crash caused by Morris, that Morris was negligently driving while drunk, and that Stroud had negligently entrusted the vehicle to Morris despite knowing he was intoxicated. Reid sought actual damages and punitive damages against both defendants, and demanded a jury trial on all issues. Morris never filed an answer or responded to discovery requests. Stroud answered, claiming he did not know Morris had been drinking and denying that he gave Morris permission to drive the car, except to work. Stroud did not respond to discovery requests, but he was deposed. Reid ultimately filed a motion for a

default judgment against Morris. He also filed a motion asking that Stroud be held liable, contending that Stroud had admitted all material facts by failing to respond to requests.

The trial court entered an order for default judgment against Morris and granted partial judgment against Stroud, ruling that Stroud had admitted the relevant facts and was therefore liable. At a bench trial – i.e. a trial before a judge but no jury – Reid’s attorney argued Reid was entitled to damages from both Morris and Stroud and also argued that both Morris and Stroud were liable for punitive damages under Georgia Code § 51-12-5.1. He argued that the Court of Appeals had incorrectly interpreted § 51-12-5.1(f) as limiting recovery to one “tortfeasor,” i.e. wrongdoer, which he claimed rendered the statute in violation of the right to a jury trial, separation of powers, and equal protection. The attorney argued that, “although I’m proceeding on a—on a bench hearing here today, I think that any attempt to interpret the punitive damages statute subsection (f) in such a way that it deprives claimants of the right to have whomever the finder of fact may be in a courtroom determine the appropriate amount of punitive damages is in violation of the Georgia Constitution.”

The trial court entered a final order awarding \$23,091.06 in compensatory damages plus costs against Stroud and Morris, to be apportioned equally between the two defendants. The court also awarded \$50,000 in punitive damages against Morris but determined it was prohibited from awarding punitive damages against Stroud because he was not “the ‘active tortfeasor.’” Georgia Code § 51-12-5.1 (f) states that, “if it is found that the defendant...acted or failed to act while under the influence of alcohol...there shall be no limitation regarding the amount which may be awarded as punitive damages against an *active tortfeasor* but such damages shall not be the liability of any defendant other than an active tortfeasor.” The trial court explained that it was bound by the Court of Appeals 2007 decision in *Capp v. Carlito’s Mexican Bar & Grill, #1, Inc.* and its 2017 decision in *Corrugated Replacements v. Johnson* to interpret the statute as “authorizing an award of punitive damages” only against “the DUI driver.” Reid now appeals to the state Supreme Court the trial court’s order awarding \$50,000 in punitive damages against Morris, the “active tortfeasor,” and no punitive damages against Stroud.

ARGUMENTS: Reid’s attorney argues the trial court misinterpreted the “active tortfeasor” limitation of Georgia Code § 51-12-5.1 (f) and interpreted by the Court of Appeals in its *Capp* decision. He asks this Court to overrule *Capp* and remand the case to the trial court for an order of punitive damages against Stroud. Alternatively, Reid challenges the constitutionality of the “active tortfeasor” limitation in § 51-12-5.1 (f), contending the statutory provision unconstitutionally infringes on Reid’s right to trial by jury and the doctrine of separation of powers under the Georgia Constitution. The trial court erred by following *Capp*’s statutory interpretation of § 51-12-5.1 (f) and prohibiting Reid from simultaneously pursuing punitive damages awards against two defendants, each of whose “punitively culpable conduct concurred as a part of the proximate cause of the plaintiff’s injuries,” Reid’s attorney argues in briefs. “The *Capp* decision incorrectly interprets the ‘active tortfeasor’ language in § 51-12-5.1 (f) to mean that it is legally impossible to have two actors whose punitively culpable conduct authorizes the imposition of punitive damages. This conclusion is logically unsound and in conflict with the plain meaning of the statute.” The legislature’s intent “does not support a theory that subsection (f)’s purpose was to limit the number of punitively culpable defendants against whom a punitive-damages award could be entered.” If this Court does not overrule

Capp, it should find the statutory limitations on punitive damages unconstitutional, Reid’s attorney argues.

Because neither Morris nor Stroud appeared at the bench trial and defaulted, the Georgia Supreme asked the Georgia Defense Lawyers Association to file an Amicus Curiae brief. The Court also asked the Attorney General’s office to file an amicus brief. The Georgia Defense Lawyers Association argues in its brief that Reid is asking this Court “to rewrite Georgia statutory and common law regarding punitive damages.” The result in this case “is controlled by statute.” In 1997, the legislature amended § 51-12-5.1 (f) to add “an exception to the punitive damages cap for cases involving evidence of a defendant’s intoxication. While the amendment stated that “there shall be no limit to the amount of punitive damages awarded against an active tortfeasor” who was under the influence of drugs or alcohol, it also clearly stated that “**such damages shall not be the liability of any defendant other than an active tortfeasor,**” the Association argues. “With the new punitive damages cap in place under § 51-12-5.1 (g) and the active tortfeasor limitation in § 51-12-5.1 (f), attacks from the plaintiff’s bar began almost immediately on numerous fronts,” the Association contends. “This case represents an initial salvo in a new round of such attacks on § 51-12-5.1.” But such attacks are “doomed to fail, just as the initial attacks failed 30 years ago,” the Association argues. “Georgia’s punitive damages statute does not infringe upon a plaintiff’s constitutionally right to jury trial, nor does it infringe upon separation of powers. However, this court need not decide any constitutional arguments and, instead, should resolve this appeal based purely on statutory interpretation. And in reading and interpreting § 51-12-5.1 (f), the conclusion at which this Court must arrive is that the Georgia Court of Appeals has already correctly interpreted the ‘active tortfeasor’ limitation in § 51-12-5.1 (f).” “The plain and ordinary meaning of Georgia’s punitive statute...requires precisely the holding reached by the Court of Appeals in *Capp*,” the Association’s attorneys argue. In *Capp*, the Court of Appeals applied the statute and correctly held that “only a drunk driver, and not the **restaurant** that served the alcohol, could be liable for punitive damages.” Ten years later, the appellate court again held in *Corrugated Replacements* that punitive damages may only be assessed against an **active tortfeasor** under § 51-12-5.1 (f). “Georgia’s appellate courts have correctly interpreted § 51-12-5.1 (f) in accordance with its plain meaning and the General Assembly’s intent in enacting subsection (f), the Association contends.

Attorney for Appellant (Reid): Scott Harrison

Attorneys for Amicus (GA Defense Lawyers Association): Elissa Haynes, Martin Levinson

CALMER V. THE STATE (S20A0441)

A man whose relatives called police out of fear he was about to commit suicide is appealing his murder conviction and life-without-parole prison sentence for killing one of the responding officers and wounding the other.

FACTS: Christopher Keith Calmer is an adult male who lives with his parents in **Monroe County**. On Sept. 13, 2014, Calmer went outside to the back porch where several of his relatives were sitting and put a handgun under his chin. Fearing Calmer was going to kill himself, his uncle called 9-1-1 and told the operator his nephew was acting erratically and had a handgun. Monroe County Deputies Jeffrey Norris and Michael Wilson, uniformed officers with the Monroe County Sheriff’s Office, responded to the call of a possible suicide with a weapon

and found Calmer's uncle out front when they arrived at the house. The uncle told the officers that his nephew "Chris" was acting erratically and was in the living room with a gun and that others were in the house. According to state prosecutors, Calmer recently had talked about shooting at law enforcement officers so they would return fire and kill him. As the deputies entered the house with their guns drawn, Calmer stood up, turned the gun on the officers, and began shooting. Norris was struck in the head and died; Wilson was struck in the leg and survived.

In May 2015, a Monroe County grand jury indicted Calmer for malice murder, felony murder, aggravated assault on a peace officer, and other crimes. The State announced it would seek the death penalty. At a June 2017 trial, 12 witnesses for the defense testified about Calmer's long history of mental illness. The witnesses included family members, physicians, experts in police procedures and crisis intervention, and a forensic psychiatrist. In rebuttal, the State presented testimony from its psychiatrist. The jury also heard testimony from the trial court's forensic psychologist who was employed by the state Department of Behavioral Health and Developmental Disabilities. Following the June 2017 trial, the jury found Calmer guilty on all counts and he was sentenced to life in prison with no chance of parole. Calmer now appeals to the Georgia Supreme Court.

ARGUMENTS: "This case started as a suicide call," Calmer's attorneys argue. "In the throes of paranoia, pain, and withdrawal symptoms, Christopher Calmer threatened to take his own life. Mr. Calmer's family called 9-1-1 in an attempt to seek help for their suicidal loved one. Less than a minute after arriving, both deputies drew their weapons and unlawfully entered Mr. Calmer's home without announcing themselves, without permission, without a warrant, and without probable cause. Mr. Calmer reacted to the intrusion, turning the gun from himself to the deputies." Calmer's convictions must be reversed "because the trial court abused its discretion in denying Mr. Calmer's motion for immunity from prosecution," the attorneys argue in briefs. "In Georgia, individuals are under no duty to retreat and have the right to stand their ground and use deadly force in defending themselves and their habitation under Georgia Code § 16-2-23." "The trial court, based on a flawed understanding of the law of justification, failed to find Mr. Calmer immune from prosecution and failed to give the appropriate jury charges on defense of habitation, self-defense, the right to resist unlawful arrest, and failed to give requested charges on lesser included offenses which were supported by the evidence," the attorneys argue. The Georgia Supreme Court has ruled that in "some cases, where the circumstances are not such as to justify the killing of the officer, they may be sufficient to reduce the homicide from murder to manslaughter." The trial court's failure to adequately charge the jury prevented the jury "from considering the nuances of this tragedy in light of the laws of Georgia and effectively denying him a defense in violation of the Sixth Amendment to the Constitution of the United States." As the evidence showed, Calmer had a long history of mental illness and physical ailments. Defense expert Dr. Julie Dorney, a psychiatrist, testified that Calmer suffered from bipolar disorder, post-traumatic stress disorder, and Tramadol withdrawal. At the time of the shootings, she said that Calmer was in a period of "extreme agitation," coupled with psychosis, depersonalization, and paranoia. "He had not planned to hurt anyone," she testified. "He – there was no planning involved. He was psychotic. He was out of his mind, pacing around, agitated, in pain, confused, depersonalizing, hearing voices, you know, and reacted to the situation when the door opened." At the pre-trial hearing on Calmer's motion that he be granted immunity from prosecution, his

attorneys established that the two deputies had “unlawfully and forcibly entered his home with guns drawn, and Mr. Calmer reacted accordingly.” Calmer did not intend to kill or injure anyone, his attorneys argue. “Here, the evidence showed that Mr. Calmer’s expressed intent was to commit suicide. At no time did Mr. Calmer threaten any other individual other than himself. Since suicide is not a crime in Georgia, Mr. Calmer’s suicide attempt was a lawful act. It was simply the manner in how he was attempting suicide that was unlawful. Alternatively, the evidence showed that Mr. Calmer was acting in defense of habitation, self, or to avoid unlawful arrest, if he used greater force than necessary without intent to kill, then that would be reckless conduct,” his 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 denying Calmer’s motion for immunity from prosecution, based on defense of habitation, based on self-defense, or based on an unlawful arrest. Following a hearing on his motion that he be immune from prosecution, the trial court ruled that Calmer “has failed to show that he is entitled to immunity by a preponderance of the evidence, and it is more likely than not that Calmer was not acting in self-defense when he committed the crimes in which he is charged.” The trial court also did not err in refusing to charge the jury on justification, the State argues. In this case, “even slight evidence of justification was not presented by either side at trial.” Calmer’s main defense was insanity, and the jury “heard a myriad of evidence from all parties.” “The jury had a plethora of evidence to consider when making its verdict – all of which would have outweighed any jury instruction on justification,” the State contends. Finally, the trial court did not err by refusing to instruct jurors they could consider that Calmer committed less serious crimes, or “lesser-included offenses,” than murder. The trial judge considered whether Calmer was entitled to jury instructions on voluntary manslaughter and involuntary manslaughter, but based on the evidence at trial, determined that such charges were not warranted. The trial court made no error in making that determination, the State argues.

Attorneys for Appellant (Calmer): Gabrielle Pittman, Nathaniel Studelska

Attorneys for Appellee (State): Jonathan Adams, District Attorney, Elizabeth Presley, Chief Asst. D.A., Cynthia Adams, Dep. Chief Asst. D.A., Carolee Jordan, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Michael Oldham, Asst. A.G.

HOOPER V. HOOPER (S20A0449)

A man is appealing the Georgia Court of Appeals’ dismissal of his application to appeal a **Houston County** court’s denial of his motion requesting a new trial in his divorce.

FACTS: The facts show that the trial court entered a divorce decree on May 25, 2018 involving **Cornelius Hooper** and **Josephine Hooper**, in which the judge denied attorneys’ fees to both parties. The husband filed a motion for new trial. In response, the wife argued that his motion was frivolous and she specifically asked for attorneys’ fees for having to respond. On Sept. 6, 2018, the judge dismissed the husband’s motion when he failed to appear at a hearing on his motion for new trial, and indicated in the order that he would entertain a motion for attorneys’ fees within 30 days of the order. That day, the wife filed a motion for attorneys’ fees under Georgia Code § 9-5-14. On Oct. 12, 2018, the trial court ruled in her favor and ordered the husband to pay her attorneys’ fees. On Nov. 13, 2018, the husband filed an application to appeal

with the Court of Appeals, but the state's intermediate appellate court dismissed the application because it was not filed within the deadline set by court procedures. The Court of Appeals concluded that the clock began running on the 30-day time period he had to file his application on Sept. 6, when the trial court dismissed his motion for new trial. Relying on its 2002 decision in *Hill v. Buttram*, the Court of Appeals rejected the husband's argument that he filed the application within the deadline because he filed it within 30 days of the trial court's order Oct. 12 that finally disposed of his motion for new trial when it dealt with the fees issue. Although the trial court had previously entered an order denying the motion for new trial on Sept. 6, that order did not finally dispose of the motion because it reserved the issue of attorneys' fees, the husband's attorneys argued. The Court of Appeals disagreed and determined that because the husband's application was filed 68 days after the trial court's Sept. 6 order, the application was late and therefore dismissed. Cornelious Hooper now appeals to the state Supreme Court.

ARGUMENTS: The husband's attorneys argue the Court of Appeals erred in dismissing the application as untimely. Under the Georgia Supreme Court's 2016 decision in *Islamkhan v. Khan*, "a reservation of fees during litigation does not finally dispose of the case until the fee issue is decided," the attorneys argue. The new trial order did not *finally* dispose of the motion because it specifically reserved the fees issue for later. "The motion for new trial was not finally disposed of until the trial court ruled on the reserved issue of fees," the attorneys argue in briefs. Therefore the 30-day clock did not start running until Oct. 12 when the trial court finally disposed of his motion for new trial by deciding the fee issue, and he therefore filed his application to appeal within the deadline. If the wife had not submitted a motion for attorneys' fees, the Sept. 6 order would have become the final order, but the new trial order was not final until the court ruled on that motion.

The wife's attorney argues that the Court of Appeals properly dismissed the husband's application for discretionary appeal of the divorce decree as untimely because the wife's post-judgment motion for attorneys' fees relied solely on Georgia Code § 9-5-14. The Court of Appeals order does not conflict with *Islamkhan* because that case involved the reservation of attorneys' fees under Georgia Code § 19-6-2 within the divorce decree itself where there had not yet been a motion for new trial. Here, on the other hand, the trial court specifically refused to grant attorneys' fees under both § 9-15-14 and § 19-6-2 in the underlying divorce action and only later referenced the availability of fees under § 9-15-14 in its post-judgment order. The final order dismissing his motion for new trial "only referenced post-judgment attorneys' fees, not attorneys' fees incurred during the underlying divorce action," the attorney argues in briefs. "The trial court here never granted or reserved attorneys' fees as an issue in the underlying divorce action; attorneys' fees were only awarded post-judgment under § 9-5-14..." "Post-judgment motions for attorneys' fees under § 9-5-14 should not extend the time period for a litigant to appeal the underlying divorce action, particularly when the litigant abandoned the pre-appellate process at the motion for new trial stage," the wife's attorney argues.

Attorneys for Appellant (Cornelious Hooper): Joann Sharp, Margaret Simpson

Attorney for Appellee (Josephine Hooper): Jocelyn Daniell

2:00 P.M. Session

AGEE V. THE STATE (S20A0726)

A woman is appealing her conviction and life prison sentence for the 1992 murder of her husband, arguing the trial court erred by admitting as evidence hearsay statements attributed to the man with whom she was having an affair at the time of the murder.

FACTS: Linda Agee and Randall Horace Peters met as teenagers, married when they were 18 years old, and had twin daughters. The couple owned a business together that delivered fresh produce, requiring them to leave their home in **Walton County** at about 2 in the morning to make deliveries. Agee grew tired of the job and her marriage and began having an affair with Jeffrey Sargent, a man she had met in 1989 while the two co-coached their daughters' softball team. Shortly before Peters's death, Agee asked him for a divorce, and Sargent also filed for divorce from his wife.

On March 19, 1992, Randy and Agee were arguing, according to a woman who was cleaning their home and later testified. After dinner that night, Agee took the twins to softball practice, then later dropped them off to spend the night with Peters's parents, as was customary. Not long after, however, she returned to the grandparents' house, panicked-sounding and saying that "Randy may be in trouble." According to Agee, when she had returned home, she heard her husband shout from the bathroom, "It's hot," or "I'm shot." She said she saw a large, shadowy figure down the hallway and noticed the back door was open. Afraid, Agee said she left in her car to get help, driving by the Monroe Police Department on her way to the home of Peters's parents. After hearing her story, Peters's father went to check on his son. Peters was found lying on his back in the hallway of his home. According to State prosecutors, Peters had been forced into the shower stall fully clothed, then shot twice with bird shot, with one shot to his lower abdomen and the other to his upper chest. The pellets from the shotgun pierced his lungs and heart and after stumbling into the hallway, he fell to the floor and bled to death. Evidence showed that earlier, on her way to the home of Peters's parents, Agee had stopped at Susan's Play World, a day care center, where she met in the parking lot with Sargent. At Agee's and Peters's home, police found no signs of forced entry, and although the living room and master bedroom had been ransacked, other rooms were not disturbed, and many items of value remained untouched, such as jewelry and electronics.

In his interview with police, Sargent said he had driven by Agee's and Peters's house at 10:00 p.m., about the time Agee said she went home and found her husband in distress. He said he had met Agee at Susan's Play World the night of the murder, and they discussed her wanting a divorce. According to testimony from one of the investigators, Sargent repeatedly said, "If he told us the truth, that he'd get life or the electric chair if he told us why he went by Agee's house." A week after Peters's murder, Agee filed a claim for Peters's \$100,000 life insurance policy for which she was the sole beneficiary. She inherited the business, which she eventually shut down, some land Peters had purchased, and his tractor and truck.

The District Attorney and lead prosecutor at the time, Alan Cook, later testified that at the time of the murder, two suspects quickly emerged: Agee and Sargent. Almost a year after the crime, however, the investigation had stalled. To jump start it, Cook filed a motion asking the court to grant Sargent "use and derivative use immunity" to secure Sargent's grand jury testimony against Agee. Cook explained to the jury that upon granting this kind of immunity to a

witness, the witness could no longer refuse to testify on 5th Amendment grounds. After learning about Cook's motion, Sargent and Agee got married on June 23, 1993. The hearing on the State's motion to grant Sargent the immunity was scheduled for June 24, 1993. Cook testified that following the hearing, the court granted the State's petition and granted Sargent the immunity over his attorney's objections. Cook then served Sargent with a subpoena to appear before the Walton County grand jury. Sargent's attorney filed a motion to quash the subpoena, invoking spousal testimonial privilege. Cook explained to the jury that the spousal testimonial privilege arguably provided Sargent with an alternative way to refuse to testify against Agee despite the court's previous grant of "use and derivative use" immunity. Following the hearing on Sargent's motion to quash, the court ruled in Sargent's favor and quashed the grand jury subpoena, not on 5th Amendment grounds but upon Sargent's recently-acquired spousal testimonial privilege. Once again, the Peters murder investigation stalled. Over the years, cold case investigators continued to work the case but never found any suspects other than Agee and Sargent, who the State said both had a motive to kill Peters and who were present or near the crime scene the night of the murder.

In April 2014, 22 years after Peters's murder, a Walton County grand jury indicted Agee with malice murder and felony murder for the death of her husband. The State filed a motion in which it argued that Sargent's statements were admissible under "the hearsay necessity exception and the Defendant's waiver of confrontation by forfeiture by wrongdoing." The State argued that Agee gave up her right to confrontation through her own wrongdoing – conspiring with Sargent to get married so he would not have to testify against her. Sargent remained married to Agee until his death in 2006 from natural causes. In 2014, the State sought to admit into evidence: 1) testimony by detectives who had interviewed Sargent; 2) statements Sargent made to officers while they were transporting him; and 3) statements Sargent made to certain family members. The trial court granted the State's motion based on "forfeiture by wrongdoing." Subsequently at her trial, several former law enforcement officers testified about Sargent's statements to them, including one investigator's testimony that Sargent had told him, "If I tell you what I know, I'm going to get the electric chair or life in prison." When asked why he thought this, Sargent said, "Well, I didn't kill him."

Following the trial, in June 2015, the jury found Agee guilty on both counts and she was sentenced to life in prison. Agee now appeals to the state Supreme Court.

ARGUMENTS: Attorneys for Agee argue the trial court erred by concluding that Agee's right to confront witnesses against her was waived based on "forfeiture by wrongdoing" and therefore the trial court erred by admitting hearsay statements of witness Sargent. "It is undisputed that the hearsay statements of Jeff Sargent are presumptively inadmissible" under the U.S. Supreme Court's 2004 decision in *Crawford v. Washington*," Agee's attorneys argue in briefs. "*Crawford* held that for a 'testimonial statement' to be offered against the accused, the declarant must be available for confrontation, or if unavailable, subject to cross examination at some previous time." In this case, State prosecutors conceded and the trial court ruled that *Crawford* rendered Sargent's hearsay statements inadmissible because the witness was unavailable and Agee had not had a prior right to cross examine him. There are two exceptions to *Crawford*, one of which is "forfeiture by wrongdoing." But the "forfeiture by wrongdoing" exception to *Crawford* "requires the State to prove the accused 'intended to prevent a witness from testifying;' mere knowledge of the consequences of the accused's actions are insufficient to

trigger forfeiture,” the attorneys argue. “The trial court impermissibly relied on the fact that Sargent married Agee as proof that Agee intended to prevent Sargent from testifying.” Agee’s conduct – getting married – was not “wrongful.” Sargent died of natural causes in 2006. “Agee did not engage in conduct to prevent Sargent from testifying with respect to the 2014 indictment and subsequent trial that took place in 2015. Agee did not make Sargent unavailable for trial in 2015. Sargent was unavailable for trial in 2015 because he had died nine years prior to the start of the trial.”

The State, represented by the District Attorney’s and Attorney General’s offices, argues the trial court did not err in admitting Sargent’s statements after finding Agee had waived her right to confront the witness due to “forfeiture by wrongdoing.” At a hearing on Sargent’s motion to quash the subpoena requiring him to testify, the State presented evidence that Agee’s twin daughters had told a guardian ad litem that their mother had said she probably would have to marry Sargent so he would not have to testify against her. The State then argued that the marital privilege should not apply in this case, as there should be an exception when “it appears that the marriage took place primarily to seal the lips of an adverse witness....” Specifically, the “forfeiture by wrongdoing” doctrine held that anyone “who obtains the absence of a witness by wrongdoing forfeits the right to confrontation.” In this case, “the facts as found by the trial court support the determination that Mr. Sargent’s statements were admissible under the doctrine of ‘forfeiture by wrongdoing,’” the State argues. The trial court found that Agee had told her children that the reason for the marriage was to avoid Sargent having to testify against her. “As this conduct did subsequently procure his unavailability to be called as a witness up to the time of his death, she, by her own wrongdoing, waived her right to confront him and the statements were properly admitted against her,” the State argues. The word “wrongdoing” is not limited to conduct that is “unlawful.” Rather it can be conduct “designed to prevent the witness from testifying.” Therefore, the trial court properly admitted Sargent’s statements under the doctrine of “forfeiture by wrongdoing,” the State contends.

Attorneys for Appellant (Sargent): Bruce Harvey, Stephen Katz

Attorneys for Appellee (State): Layla Zon, District Attorney, Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

CROWDER V. THE STATE (S19G0931)

A man is appealing a Georgia Court of Appeals ruling that prevents the immediate return of \$46,820 of his money that was seized from his daughter as she attempted to board a flight from Atlanta’s main airport.

FACTS: In this complex case about legal procedural issues, the facts according to the Court of Appeals are as follows: The morning of Oct. 3, 2016, a **Clayton County** police officer on drug-interdiction duty at Hartsfield-Jackson International Airport received a call from a Transportation Security Administration (TSA) agent that a woman had just passed through the main TSA security checkpoint with a carry-on bag containing a large amount of cash that she was attempting to conceal. The officer and two of his partners went to the woman’s departure gate and asked about the contents of her bag. The woman said her name was Shara Tyesha Cumins and she was on her way back to California after visiting family in Alabama. When they asked her if TSA agents had found anything in her carry-on bag, she said no. But when the officer told her the TSA agent had already told him she was carrying a large amount of cash, she

admitted she was. Based on several circumstances, including what the officer described as her nervous demeanor, he suspected Cumins was involved in the illegal drug trade and asked her to accompany him and his partner to a nearby office for further questioning. After consenting to the officer's request to search the bag, officers found several blocks of U.S. currency wrapped in plastic and black construction paper that totaled \$46,820. They found no drugs or other contraband. Cumins said the money had been given to her by her father, **James Lamar Crowder**. Cumins then provided them with her sister's phone number where she said her father lived. Eventually one of the officers spoke to Crowder, who said he had only given his daughter between \$2,000 and \$3,000. The officers then confronted Cumins with Crowder's claim that he'd given her no more than \$3,000, at which point she stated she was given the money to take to California but refused to identify the person who had given it to her. As detailed in the appellate court's decision, the officers began the procedure of seizing the money, having Cumins sign a form in which she first wrote Crowder owned the money, then changed the owner to a "Beatrice Longbottom" after officers reminded her that moments earlier she had said her father was not the owner.

Crowder and Cumins later said that Crowder was living in an abusive situation with Cumins's sister and he had lied about the amount of money during the phone call with officers because his other daughter was listening as the call was on speaker phone. The purpose of the money, Crowder and Cumins said, was for Cumins to find a place in California for father and daughter to live where she could take care of him. They had not told Cumins's sister about the plan. The money represented Crowder's life's savings, and Cumins told the officers it belonged to someone other than her father only after she claimed the officers threatened to cut off her father's Social Security payments. The police then seized the cash, but no arrest was made, no charges were filed, and Cumins subsequently was allowed to catch a later flight to California.

In December 2016, the State filed a Complaint for Forfeiture in Clayton County Superior Court for the \$46,820 that had been seized from Cumins. The complaint alleged that the money was being used in an attempt to purchase marijuana or other controlled substances and that Cumins was the owner. A month later she responded to the complaint, listing Crowder as the owner of the cash. In February 2017, the State filed an Amended Complaint for Forfeiture, naming Crowder as the owner of the currency. The State then tried to serve Crowder with the complaint at his last known address in Opelika, AL. However, the State inadvertently delivered it to a street number of 401 instead of his address at 407. After the postal service twice returned the documents, in March 2017, the State filed a motion to have it officially served to him by publication in the local legal organ, claiming that Crowder lived out of state and that he could not be served at his last known address. In December 2017, the State filed a motion asking for the court to rule in its favor because Crowder never responded to the forfeiture complaint, despite having been served by publication. Eventually, Crowder filed a motion to dismiss the complaint, arguing the State had failed to effect service by publication.

In January 2018, the trial court held a hearing where the two police officers who had interrogated Cumins at the airport testified. Crowder also testified, claiming the \$46,280 was his money – \$9,000 of which he received as a Social Security disability payment in 2010 and \$36,000 of which he had received as settlement money for unspecified employment. In March 2018, the trial court issued an order finding that the State had failed to provide evidence that the money was being used for an illegal purpose and awarded the money to Crowder. After the State

filed a notice of appeal with the Court of Appeals, Crowder filed a motion asking the court to release the money. The trial court granted his motion. The State also filed an emergency motion with the appellate court, asking it to stay the release of the funds, which that Court granted. The Court of Appeals subsequently reversed the trial court's judgment awarding the seized funds to Crowder. Crowder now appeals to the Georgia Supreme Court.

ARGUMENTS: Crowder's attorney argues that service by publication in an "in rem" forfeiture is allowed when the value of the property seized is under \$25,000. "In all other cases, there must always be personal service, regardless of whether the interest holder resides in or out of state," the attorney argues in briefs. The attorney also contends that a trial court must rule on a pending motion for "more definite statement" before striking a claimant's answer as insufficient. Here, the State chose to avail itself of the "motion for more definite statement" procedure instead of filing a motion for default judgment. The only remedy provided for under the Uniform Civil Forfeiture Procedure Act in the event a defendant fails to file a timely answer to a complaint is to file a motion for default. "No other procedure is available to the State," the attorney argues. "The remedial purpose of the Act is to provide property holders with a fair and reasonable process for contesting the seizure of their property by the government. Only a reversal will provide Appellant Crowder a just result. Otherwise, the government will seize a citizen's life savings based on a suspicion that never materialized and without due process, creating a result that flies in the face of the protections afforded by the Georgia and U.S. constitutions. This Court should reverse the Georgia Court of Appeals decision and remand this case to reinstate the order of the trial court and order the State to immediately release the seized funds to Mr. Crowder."

The State, represented by the District Attorney's office, argues that in an "in rem" forfeiture proceeding, under state law, the complaint may be served by publication when an interest holder resides out of state. "Here, because he was properly served by publication and, in any event, because he was put on actual notice and permitted to amend his answer, Crowder shows no harm," the State argues in briefs. Crowder was properly served by publication as Georgia statutory law provides. Also, a trial court must rule on a pending motion for a "more definite statement" before striking a claimant's answer as insufficient, the State contends. "These provisions were intended to protect claimants, many of whom are proceeding pro se, from failing to comply with the procedural and pleading requirements of the forfeiture statute." This Court should uphold the Court of Appeals judgment, the State urges.

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