



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT Summaries of Facts and Issues

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Wednesday, May 20, 2020

10:00 A.M. Session

SYNOVUS BANK FORMERLY KNOWN AS FIRST COMMUNITY BANK OF TIFTON V. KELLEY, TRUSTEE (S20Q0843)

In this complex bankruptcy case, the United States District Court for the Middle District of Georgia has certified a question about Georgia law to the Georgia Supreme Court.

FACTS: On Dec. 7, 2016, the **Tift County** Superior Court entered a final judgment in favor of **Synovus Bank** against Banner Grain and Peanut Company, Banner Hay Company, Inc., Kenneth Brownlee, and Jan Brownlee in the amount of \$11,703,160.47. After applying and crediting payments received by Synovus Bank, on Dec. 22, 2016, the Tift Superior Court issued and formally recorded a "Fi.Fa.," or a writ of "fieri facias," in the amount of \$11,379,007.39 in the office of the court clerk. A Fi.Fa. is a document that is issued by the clerk in the court which entered the judgment. It can be used for the purpose of recording a lien on the debtor's property.

The debtors in this case were Kenneth E. and Janice J. Brownlee. On Jan. 25, 2017, the clerk of the Worth County Superior Court also recorded the Fi.Fa.

On March 21, 2017, the Brownlees filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. On March 7, 2018, the case was converted to a case under Chapter 7, and **Walter W. Kelley** was appointed as trustee. On July 6, 2018, Kelley filed a “Trustee’s Complaint to Avoid Transfers” in the federal Bankruptcy Court, alleging that Synovus’s judicial lien was a transfer of the Brownlees’ property which occurred within 90 days before the bankruptcy case was filed and that it was avoidable under federal law. Synovus denied that the lien transfer regarding the Tift County real estate occurred within the 90-day time period but conceded that the judicial lien transfer regarding the Worth County real estate was within the 90 days. The Bankruptcy Court ruled in favor of Kelley, finding that the judgment did not create a lien against the Brownlees’ real estate between the Brownlees and Synovus until the Fi.Fa was recorded on the “General Execution Docket” in the court clerk’s office. Synovus then appealed the Bankruptcy Court’s judgment to the U.S. District Court. At issue in this case is whether under Georgia statutory law, a lien against the Brownlees’ property was created at the time of the judgment or not until the Fi.Fa. was recorded, and if the latter, whether the effective date of that lien relates back to the date of the judgment for purposes of establishing the date a creditor could obtain a lien against the debtor’s real property.

ARGUMENTS: Attorneys for Synovus Bank argue that the entry of the judgment creates a lien on the debtors’ real property on the date the judgment is entered. “Interpreting Georgia Code § 9-12-80 as the statute creating the lien, and Georgia Code §§ 9-12-81, 9-12-82, 9-12-83, 9-12-84, and 9-12-86 as the statutes perfecting the lien prevents a conflict between the statutes,” the attorneys argue. Georgia Code § 9-12-80 states: “All judgments entered in the Superior Courts...of this state shall be of equal dignity and **shall bind all property of the defendant in judgment, both real and personal, from the date of such judgment** except as otherwise provided in this Code.” “If this Court requires a Fi.Fa. to be issued, recorded, and indexed in the General Execution Docket and other applicable records prior to the creation of a lien between the judgment creditor and the judgment debtor, this Court will render §§ 9-12-80 and 9-12-85 completely meaningless.” A judgment “cannot ‘bind’ a judgment debtor’s real property from the date of the judgment if the additional requirement of recording and indexing the execution on the ‘applicable records’ creates the lien.” “Construing § 9-12-86 as a statute that creates the judgment lien rather than perfects the judgment lien contradicts the legislative history of the applicable statutes and the cases interpreting them,” the bank’s attorneys argue. “This Court’s prior decisions interpreted § 9-12-80 as a statute that creates a lien against debtors’ real property.” In conclusion, the attorneys argue that, “When the Tift Superior Court entered the judgment on Dec. 7, 2016, Synovus Bank obtained a judgment lien against all of the debtors’ property.”

Kelley’s attorney argues that “under Georgia law, entry of a judgment does not *create a lien* against real property. Rather, *recording* a judgment creates a lien against real property” under § 9-12-86. “Second, a judicial lien does not ‘relate back’ to the date of the judgment entry date,” the attorney argues in briefs. “The recording date is the date a judicial lien is created in real estate. The recording date is also the date a judicial lien is perfected as against third parties. Under § 9-12-86, with respect to real estate, lien creation and perfection occur simultaneously: at the time the judgment is recorded. Under Georgia law, the judgment recording date does not

‘relate back’ to the judgment entry date, except to establish priority among judgment holders from the same term of court.” The statutes are not in conflict, Kelley’s attorney contends. Georgia Code § 9-12-80 “provides that a judgment shall bind all the defendant’s property. Georgia Code § 9-12-86 “provides no judgment shall affect or become a lien on real estate until it is recorded. Under their plain language, the statutes operate without conflict and may be given full meaning and effect in accordance with their plain language.”

Attorneys for Appellant (Synovus): David Garland, R. Lee Brown, Jr., Stephan Ray

Attorney for Appellee (Kelley): Thomas Lovett, III

GLENN V. THE STATE (S19G1236)

A man is appealing a Georgia Court of Appeals decision that upholds the revocation of his probation for kicking a police car door off its hinges while officers were arresting him. The man argues he was justified in using force and damaging property because the arrest was illegal.

FACTS: In June 2017, **Christopher Glenn** was convicted of felony obstruction of an officer and battery and was sentenced to 24 months probation. As a general condition of his probation, he was not to violate any criminal laws. On May 3, 2018, Officer Morgan Lee of the Athens-**Clarke County** Police Department responded to a “suspicious person” call in the area of Oglethorpe Elementary School. The officer found Glenn walking near the back of the school around the time students were being released for the day. Because Lee had had a previous encounter with Glenn, he called for backup, while ordering Lee to stop then arresting him for loitering and prowling. Lee later testified that his encounter with Glenn was recorded via body camera, and the video was introduced as evidence. However, shortly after the arrest, Lee left the scene to conduct further investigation at the school before later returning. Another officer testified he responded to the location and Glenn was placed in the back of a patrol car while waiting for the first responding officer to complete his investigation. The second officer testified Glenn complained of being dehydrated so emergency medical services were called to the scene to check on him. After Glenn was cleared by EMS, officers asked Glenn to get out of the ambulance, but he refused, grabbing onto the seatbelt and not letting go. He continued to resist, and the officer warned Glenn that if he continued, he would use his Taser on him. The officer said that once Glenn was placed back in a patrol car, he kicked off the door panel on the driver’s side. The officer testified that his rear passenger door was off its hinges and would not close properly. It eventually had to be replaced. Following the incident, a probation warrant was issued against Glenn, alleging he had violated his probation by committing the new offenses of loitering and prowling, obstruction of a law enforcement officer, and interference with government property. The State filed a petition to revoke his probation.

Following the probation revocation hearing, the judge ruled the officers had lacked sufficient probable cause to arrest Glenn for loitering and prowling. He found no violation of probation for that offense or for obstruction of a law enforcement officer. However, the judge did rule that Glenn violated his probation based on the new offense of interference with government property, and he revoked 90 days of probation to be served in the county jail. The judge suspended the confinement sentence upon Glenn’s acceptance into a mental health accountability court. Glenn then appealed to the Court of Appeals, the state’s intermediate appellate court, arguing the trial court erred by finding he committed the new offense of interference with government property because he was resisting an unlawful arrest and was justified in using force

and damaging property. But the appellate court upheld the trial court's ruling. Glenn now appeals to the state Supreme Court, which has agreed to review his case to answer two questions: May a defendant damage government property in an attempt to resist an unlawful arrest? And if so, did the Court of Appeals err in affirming the revocation of Glenn's probation?

ARGUMENTS: Glenn's attorney argues the answer to both questions is yes because, "It has long been the law in the state of Georgia that an individual arrested illegally may use force to resist the unlawful arrest." In a 1951 decision in *Smith v. State*, the Georgia Court of Appeals stated that, "If the...arrest was legal, he had no right whatever to resist it; if it was illegal, he had the right to resist with all force necessary for that purpose." "There is nothing inherent in this concept which should indicate that the permissible force used by an arrestee being illegally detained cannot include the use of force against an object," the attorney argues in briefs. "The historical underpinnings of the rule allowing a person to use reasonable force to counter an illegal arrest lie in the jealous guarding of personal liberty," the attorney argues. "As such, an important interest is at stake: When government property is damaged in the course of resisting such an illegal arrest, such damage should be considered to be justified." Case law has long justified the use of force against the person of an officer attempting to make an unlawful arrest. "When the use of such force causes the incidental damage of government property, that damage should be likewise justified." In addition, the state Supreme Court "should rule that the Court of Appeals erred in affirming the revocation of Mr. Glenn's probation in this case, as the evidence demonstrated that the damage caused by Mr. Glenn to the police car only resulted from Mr. Glenn's efforts to resist his continued unlawful detention."

The State, represented by the Acting District Attorney, argues that both the lower court and intermediate appellate court ruled correctly in upholding the revocation of Glenn's probation for interference with government property. "A citizen may damage government property as a part of his or her right to resist unlawful arrest provided that it is reasonably necessary to prevent the imminent arrest and is proportionate to the force being used in the unlawful detention," the State argues in briefs. A review of previous court decisions "reveals that the Georgia appellate courts have not expressly limited the right to resist an unlawful arrest to just persons." However, "the statutory basis for the legal application to property is ill defined," and Georgia Code § 16-3-20, the justification statute, does not specifically include it. The Court of Appeals properly concluded that the trial court acted within its discretion in finding that Glenn's kicking and damaging the door to the patrol vehicle in this case exceeded the boundaries provided by the statutory and case law, the State contends. As the Court of Appeals pointed out, "there was a significant break in time of more than 15 minutes between the arrest and the kicking and damaging the patrol vehicle door. Petitioner did not have an 'imminent' or 'immediate' need to use force against the police vehicle in order to resist the alleged unlawful arrest, which the case law requires. Similarly, his conduct was not 'reasonably necessary.'" The State urges the Supreme Court to affirm the Court of Appeals ruling.

Attorney for Appellant (Glenn): Benjamin Pearlman, Public Defender

Attorney for Appellee (State): Brian Vance Patterson, Acting District Attorney

REYES V. THE STATE (S20A0780)

A man is appealing his murder conviction and life prison sentence for the stabbing death of his girlfriend 16 years ago at their **Gwinnett County** home.

FACTS: The night of July 31, 2004, **Herminio Nicholas Reyes** and his girlfriend, Sadot Ozuna-Carmona, hosted a birthday party for Maribel Mejeia. The couple lived in an apartment on Amber Drive in Norcross. Maribel was married to Sadot's nephew, Nelson Garcia-Ozuna, and Maribel, Nelson, and his son also lived at the apartment, as did three men who slept on sheets in the living room. There were a lot of people at Maribel's birthday party. Everyone was drinking and eating when Sadot and Reyes got into an argument. According to her nephew, Nelson, his aunt's relationship with Reyes was volatile, the couple argued frequently, and Sadot had told Nelson that Reyes had threatened to kill her at least three times, the most recent of which was about a week before the party. After Sadot and Reyes began arguing, Sadot struck him on the head with a beer bottle, causing the bottle to break. Reyes went downstairs, and later that night, Sadot packed up Reyes's belongings, put his suitcases in the living room, and told Reyes to leave. Reyes grabbed the suitcases, put them in the trunk of a red Dodge Neon, and at some point left the apartment complex. According to state prosecutors, Reyes came back later that night after everyone was asleep. According to Reyes's defense attorney, after putting his suitcases in the red car, Reyes returned to the apartment and spoke to Nelson's uncle, who lived nearby and was at the party. Reyes then left, according to the defense. Nelson said he saw Reyes leave at about 1:00 a.m. and also saw his aunt, Sadot, around the same time in her nightgown. She said she was going to bed. Nelson testified he then went to bed.

The next morning, Nelson knocked on Sadot's bedroom door to wake her but got no response. He and his uncle, who had come back to the apartment that morning to cook, were able to force Sadot's bedroom door open. They found Sadot dead on her bed from stab wounds to her neck and chest. A 10-inch knife was found next to her body. Nelson's wife called 911. Jewelry and money appeared to be missing from her room, and her car was gone. According to Nelson, the knife belonged to his aunt, and she kept it under her bed. Nelson testified that Sadot had told him Reyes knew where she kept the knife.

According to the State, Reyes never returned to the Norcross apartment or contacted anyone who lived there. Instead, the evidence showed he fled to Mexico and began working at a plastic factory. Later in 2004, he met a woman who worked at the factory and the two married in 2005. In 2006, the couple moved to California. Ten years later, Reyes was arrested in 2016 on unrelated charges and authorities took a sample of his DNA. The national CODIS database matched Reyes's DNA profile and alerted Gwinnett County investigators. The investigators went to California with a search warrant and obtained Reyes's DNA using a buccal swab, which they sent to the Georgia Bureau of Investigation for analysis. That sample DNA matched profiles from Sadot's rape kit obtained 12 years earlier at the time of her death.

A Gwinnett County grand jury indicted Reyes in April 2018 for malice murder, felony murder and aggravated assault. The only witness from 2004 investigators were able to locate was Nelson, who was living in Nebraska. He testified at Reyes's trial in October 2018. Following the trial, the jury found Reyes guilty on all counts and he was sentenced to life in prison. Reyes now appeals to the Georgia Supreme Court.

ARGUMENTS: Reyes's attorney argues the evidence was insufficient to support Reyes's malice murder conviction. "The State presented no witness who observed Reyes stab Sadot with a knife or otherwise explain the circumstances in which she was killed or prove Reyes's guilt as a party to the crime," the attorney argues in briefs. Here, "the circumstantial evidence supported more than one theory, one consistent with guilt and another with innocence."

“Other than Sadot and Reyes, five adults resided at the apartment and slept there following the party and had an opportunity to commit the crime: Nelson, his wife, Maribel, and the three men who slept on the floor in the living room.” In this case, the facts “are consistent with innocence and are insufficient to exclude every reasonable hypothesis save that of the guilt of Reyes,” the attorney argues. “Suspicion of guilt will not authorize a conviction.” “Because the State failed to exclude every other reasonable hypothesis save that of the guilt of Reyes, the evidence was not sufficient to authorize a rational trier of fact to find Reyes guilty of malice murder beyond a reasonable doubt.” Also, Reyes received ineffective assistance of counsel from his trial attorney in violation of his constitutional rights for failing to file a motion asking the court to suppress the DNA evidence Gwinnett County officers improperly obtained in California, and for failing to present evidence that would have been favorable to Reyes. Among other arguments, Reyes’s appeals attorney argues that the trial court erred in admitting evidence under the residual hearsay exception that allowed the admission of Nelson’s statements that his aunt had told him she had told Reyes to leave, Reyes had threatened to kill her, the knife was hers, and she believed Reyes knew where she kept it.

The State, represented by the District Attorney’s and Attorney General’s offices, acknowledges that the case against Reyes was largely based on circumstantial evidence, but argues it was sufficient to convict Reyes of malice murder beyond a reasonable doubt. Questions “as to the reasonableness of hypotheses are generally to be decided by the jury which heard the evidence and where the jury is authorized to find that the evidence, though circumstantial, was sufficient to exclude every reasonable hypothesis save that of guilt, that finding will not be disturbed unless the verdict of guilty is insupportable as a matter of law,” the State argues in briefs. The jury heard Reyes’s defense that someone else killed Sadot and that his DNA was left on the knife and in her body through non-criminal means and rejected that theory and decided that Reyes, who had fought with the victim the day she was killed and who had threatened to kill her previously, was guilty. “This determination should not be disturbed,” the State argues. The trial court properly determined that Reyes received effective assistance of council from an experienced criminal attorney who had worked as a prosecutor for about 25 years before entering private practice a few years before Reyes’s trial. Reyes cannot show that the DNA evidence obtained in California affected the jury’s verdict in his case. Regardless of whether a Georgia police officer can lawfully obtain a search warrant in California, Reyes has not shown that his trial attorney’s strategy and belief that the State merely could have obtained a new search warrant was unreasonable. And his trial attorney was not ineffective for failing to present “exculpatory” evidence, or evidence that would have been favorable to Reyes, the State contends. The trial court also “properly admitted the victim’s statements to Nelson Garcia-Ozuna pursuant to the residual hearsay exception.”

Attorney for Appellant (Reyes): Frances Kuo

Attorneys for Appellee (State): Daniel Porter, District Attorney, Samuel d’Entremont, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Leslie Coots, Asst. A.G.