



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

Please note: *These summaries are prepared by the Office of Public Information to help news reporters determine if they want to cover the arguments and to inform the public of upcoming cases. The summaries are not part of the case record and are not considered by the Court at any point during its deliberations. For additional information, we encourage you to review the case file available in the Supreme Court Clerk's Office (404-656-3470), or to contact the attorneys involved in the case.*

Tuesday, November 13, 2007

10:00 A.M. Session

TROY ANTHONY DAVIS V. THE STATE (S07A1758)

This is an appeal in a death penalty case, stemming from a **Chatham County** Superior Court's denial of Troy Davis's extraordinary motion for a new trial. At issue is whether the trial court erred by refusing to grant a new trial or at least hold a hearing on evidence that Davis's attorneys argue is new and proves his innocence.

FACTS: Davis was convicted in 1991 of the 1989 murder of Savannah police officer Mark MacPhail. In 1993, the Georgia Supreme Court unanimously affirmed the conviction, and in 2000, it also affirmed another court's denial of his writ of habeas corpus, a court proceeding brought in the county where a prisoner is incarcerated to determine whether his imprisonment is illegal. Davis's federal habeas petition also failed. On Aug. 3, 2007, the state Supreme Court issued a stay of execution and granted his application for discretionary appeal, agreeing to hear arguments in the case.

The evidence at trial showed that Sylvester "Red" Coles asked Larry Young for a beer he had just purchased, then followed and harassed him when Young refused. Davis and Darrel "D.D." Collins joined in the confrontation near a bus station and Burger King. Trial witnesses identified Davis as the one who hit Young in the head with a handgun. All three fled when pursued by Officer MacPhail. Trial witnesses testified that Coles stopped when instructed to, that

MacPhail ran past him, that Davis fired at the officer and then, as MacPhail lay on the ground, Davis fired the final shot with a smirk on his face.

ARGUMENTS: Davis's attorneys argue that the investigation was flawed by the assumption that Davis was guilty, and that Coles's photo was not even included in the photo lineup presented to witnesses. Since the trial, seven of the nine witnesses who implicated Davis have recanted their testimony, and four witnesses have implicated Coles. To support Davis's extraordinary motion for new trial, his attorneys have presented the following affidavits:

- Gary Hargrove – is a new eyewitness who identifies Coles as the shooter;
- Harriet Murray – consistent with what she told police prior to trial, says the shooter was the man arguing with the victim;
- Anthony Hargrove, Shirley Riley, Darold Taylor – say Coles confessed to the shooting;
- Tonya Johnson, Anita Dunham – say they saw Coles with a gun minutes after the shooting, and Johnson says she refused to help him hide the gun and he warned her not to tell police;
- Daniel Kinsman – member of the military in a van at the Burger King who says the murder weapon had a “shiny finish” similar to the .38 Coles had;
- Jeffrey Sapp, Kevin McQueen – say that when they testified at trial that Davis had confessed to them, they were lying;
- Larry Young, beating victim, D.D. Collins, one of the three who'd confronted Young – recant their trial testimony in which they identified Davis as the one who struck Young in the head, now saying they were coerced by police;
- Dorothy Ferrell, Antoine Williams – recant their trial testimony identifying Davis as the shooter, saying they could not identify the shooter but were pressured by police.

The attorneys argue that no state or federal court has previously considered Davis's innocence in light of the new evidence. They contend that under a 1980 Georgia Supreme Court ruling in Timberlake v. State, Davis's case meets the requirements for a new trial, including that the evidence came to light after trial and most importantly, the evidence would “probably produce a different verdict.” They argue the trial court erred by finding that a procedural rule barred consideration of the recantations in this case, because none of the cases cited by the trial court involve multiple recantations, as this one does. They say that even if Davis's claim fails under Timberlake, the Georgia and U.S. Constitutions require a new trial under the due process prohibition against executing the innocent.

The State's lawyers respond that the post-trial statement of a witness saying his or her trial testimony was false is not cause for a new trial, and the only exception to this rule is if the testimony was pure fabrication. They say Davis has failed to meet all six of the requirements for a new trial defined by the Timberlake decision. The credibility of the affidavits is suspect, they argue, because Davis has not shown that his affidavits could not have been obtained earlier or presented earlier to the trial court. Any statements by Coles to third parties, they say, is inadmissible hearsay, and a federal court found that there was no coercion by police in this case, and that the alleged coercion was already presented to the jury at trial. Some of the affidavits merely repeated what the trial jury already heard; others were irrelevant because they come from witnesses who did not testify at the trial. The trial court did not abuse its discretion in denying Davis's motion for a new trial. Finally, the

State's attorneys argue, the trial testimony should be credited over the affidavit testimony which was extracted by defense counsel and presented only just before execution.

Attorneys for Appellant: Thomas Dunn, Jason Ewart, Philip Horton, Danielle Garten

Attorneys for Appellee: Spencer Lawton, Jr., District Attorney, David Lock, Chief Asst. D.A.

HARPAGON COMPANY, LLC V. DAVIS ET AL. (S07A1752)

This **Fulton County** appeal stems from a dispute over who is liable for paying association fees assessed against a condominium that switched owners.

FACTS: On Feb. 1, 2005, Linda Davis's Springside Condominium unit was sold in a tax sale to satisfy delinquent property taxes. Heartwood 11, LLC, which is not a party to this litigation, purchased the unit. The following year, in April 2006, Heartwood transferred the property to a sister company called The Harpagon Company. In October 2006, Springside sued Heartwood for association fees that were due. The following month, Harpagon sought a court order declaring it to be free and clear of all adverse claims. Springside then countersued, alleging that Harpagon is liable for the condominium assessments issued from the Feb. 2005 date of sale through the present. A court-ordered Special Master recommended that Harpagon be required to pay the assessments, and the trial court entered a Final Order and Decree holding Harpagon liable for paying \$9,462.65 for assessments, attorneys fees and interest. Harpagon's appeal followed.

ARGUMENTS: Harpagon contends that the trial court erred by deviating from existing precedent in holding that a tax deed purchaser is liable for condominium assessments which accrue against the property after the date of the tax sale. Springside responds that when the property was sold, the purchaser became a member of the condominium association and was thereby liable for paying any fees and related costs that were owed as covered by the Condominium Act. Springside argues that under a Georgia Court of Appeals ruling, Harpagon was responsible for paying those assessments which accrued after the date of the tax sale.

Attorneys for Appellant (Harpagon): Robert Proctor, Bradley Hutchins, Adam Caskey

Attorneys for Appellees (Linda Davis et al.): Randall Lipshutz, James Zito, Cynthia Carson

BIGGERS ET AL. V. CROOK (S07A1786)

At issue in this **Fulton County** appeal is the validity of a prenuptial agreement and whether a man's widow and her sister had any right to the property he had inherited or to money he owed the sister for repairs made to the house.

FACTS: After their mother died, William Biggers and his sister, Linda Crook, inherited their mother's property on Virgil Street in Atlanta. They took title of the real estate as joint tenants with the right of survivorship, meaning whoever outlived the other would get that party's share of the property. They agreed that Biggers would live in the house on the property, as long as he maintained it and paid the taxes. Several years later, in 1996, he married Dianne Nichols Biggers after the couple signed a prenuptial agreement, which provided that he would maintain ownership of his interest in the property, even if she contributed money to its maintenance. In 2002, Mrs. Biggers' sister, Rita Craig, helped finance repairs to the property, and Mr. Biggers signed a promissory note to reimburse her for \$12,000. The same day, he executed a deed to secure debt which was secured by the property. Less than three months later, he died. His sister, Linda Crook, then filed a civil action asking the court to declare her the sole owner of the

property and rule that Dianne Biggers and her sister had no legal claim by virtue of inheritance or by virtue of the deed to secure debt. Dianne Biggers countersued, asking the court to declare the prenuptial agreement void. Her sister also countersued, seeking repayment of the promissory note. The trial court ruled in Crook's favor, finding her the sole owner of the property, declaring the deed to secure debt to be void, and finding the prenuptial agreement valid and enforceable. Dianne Biggers and her sister are now appealing.

ARGUMENTS: Biggers and her sister argue the trial court erred in five different ways, four of which relate to the court's finding that the prenuptial agreement was valid. They also argue the trial court erred in ruling that the joint tenancy agreement between William Biggers and his sister remained intact. They argue that because he had executed a deed to secure debt, the agreement should have been severed and the right to survivorship extinguished.

Crook counters that any interest Craig may have obtained under the deed to secure debt was wiped out when William Biggers died. At least in banking cases, Crook argues, property held in joint tenancy with right of survivorship passes to the surviving party upon the other party's death, free of encumbrances made by the decedent. Crook also argues that the trial court was right on a number of fronts in finding the prenuptial agreement valid.

Attorneys for Appellants: Anthony Powell, Jody Everett, Melody Glouton

Attorney for Appellee: David Crockett