



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. Most cases are decided within six months of oral argument.*

Wednesday, January 20, 2016

Special Session

**Georgia State University College of Law
Ceremonial Courtroom**

10:00 A.M. Session

COTTRELL V. SMITH ET AL. (S16A0013)

A man is appealing a **Cobb County** judge's ruling that overturned a jury's \$635,000 verdict in his favor against five people he had sued for posting defamatory statements about him on the internet.

FACTS: For many years, Stanley Cottrell, Jr. engaged in highly publicized long-distance running exhibitions that had a Christian evangelical and "friendship" emphasis. Cottrell gained public notice as his solo running achievements were often portrayed in movies, books and other media. He successfully parlayed his image as a "world-renowned ultra-marathon runner" into business endeavors, executive leadership roles, and motivational speaking. However, his notoriety was accompanied by controversy related to his character and media reports that questioned the authenticity of his achievements, including whether he actually ran the long distances he claimed. His critics also complained that as a married man he was engaged in a number of extra-marital affairs in conflict with his self-avowed Christian evangelism. Among his critics were five people Cottrell ultimately sued: Glenn and Marian Crocker who worked for

Cottrell and helped plan two of his running exhibitions; Dr. Hugh Johnson, a Baptist minister who was Cottrell's prayer partner and confidant and learned about several women with whom Cottrell was intimately involved; Peggy Smith, one of the paramours; and Karen Smith, Peggy's daughter-in-law, who located and contacted several people she believed had information about Cottrell, including the Crockers and Johnson. After becoming convinced that Cottrell deceived people for financial gain and had no intention of repaying her mother-in-law for a \$20,000 loan she had given him, Karen Smith and her husband created a "WordPress" blog about Cottrell called, "You Shall Know the Truth." The posts contained statements that Cottrell was a "scam artist, "he'll lie to you," that "his runs aren't even real," that he "is not trustworthy," and that "his activities with women he has deceived and taken money from are criminal." (According to Cottrell, he repaid the loan from Peggy Smith early and with interest.) Karen Smith also sent emails to a "list-serve" group criticizing Cottrell and sharing links to the Blog posts. Peggy Smith sent messages to a number of Cottrell's Facebook friends making similar allegations.

Cottrell sued all five in Cobb Superior Court, claiming defamation, invasion of privacy, violation of the Georgia Computer Systems Protection Act (Georgia Code § 16-9-90) and other acts of wrongdoing, based on the on-line postings and the information they had shared about him. Following a four-week trial, the jury ruled in his favor and against Karen and Peggy Smith for defamation; against Peggy Smith and the Crocker's for breach of fiduciary duty; and against all five of them for invasion of privacy, awarding Cottrell \$635,000. The jury ruled in favor of the five defendants regarding Cottrell's claim of "tortious interference." And the judge directed a verdict against Cottrell's claims of intentional infliction of emotional distress and violation of the Computer Systems Protection Act, which the judge ruled was unconstitutional. Following the trial, Karen and Peggy Smith and Hugh Johnson filed a motion requesting a "judgment notwithstanding verdict," in which a judge overrules the decision of the jury to avoid extreme and unreasonable jury decisions. On April 30, 2015, the judge granted their motion and threw out the judgment against the Smith women and Johnson, finding the evidence "clearly failed to establish the elements of the torts alleged to the degree required." ("Tort" is a legal term for a civil wrongdoing done by one party to another.) Cottrell now appeals to the state Supreme Court.

ARGUMENTS: Cottrell argues that the defamation began when Peggy Smith realized in 2010 that Cottrell was distancing himself from her, and she and her family "met to plot their revenge." With the aid of the other defendants, they devised a plan to obtain revenge, "while enabling the Johnson and Crocker defendants to profit from Stan's business contacts," Cottrell's attorney argues in briefs. "Johnson provided private information about Stan and some contact information of some of Stan's friends and family, and made some false accusations about Stan that the Smiths used in their campaign to destroy Stan's reputation, but the Crockers did more," Cottrell's attorney argues. According to Cottrell, the Crockers "altered" his Facebook to provide a link to the Smiths' defamatory blog. The attorney argues the trial judge made two errors, first by directing a verdict on two of Cottrell's claims, "incorrectly holding" that the Computer Act was unconstitutional, and refusing to find that the defendants' actions constituted intentional infliction of emotional distress. The trial judge also erred in granting the Smith and Johnson defendants' motions for a "judgment notwithstanding the verdict." According to the evidence, Dr. Joe Resnick had claimed in an email that Cottrell had stolen his patents, and Marion Crocker relayed this email to Karen Smith, who posted it on the blog. The statements were defamatory

and it was improper for the judge to reverse the jury's ruling. The evidence also supported the verdict on the invasion of privacy and it was wrong to reverse the jury's findings on that matter.

Attorneys for Johnson and the Smiths argue that the trial court correctly directed a verdict on the Georgia Computer Systems Protection Act. There was no evidence that the defendants engaged in an unauthorized "use" of a "computer or computer network" for the reasons the statute says are illegal. Cottrell's vague assertion that "Defendants intentionally altered Plaintiff's website and Facebook page" also is not supported by the evidence. The Act is "unconstitutionally vague" because "it leaves intelligent people uncertain as to the limits of its application," the attorneys argue. It is "unconstitutionally overbroad" because it stifles expression and infringes upon behavior that is protected by the First Amendment. The trial court also correctly directed a verdict in the defendants' favor on Cottrell's claim of intentional infliction of emotional distress. Cottrell's brief contains no authority which would support reversing the trial court's ruling because none of the behavior rose to the egregiousness "as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community," as stated in a recent Court of Appeals ruling. Also there was no evidence that Cottrell suffered "severe" emotional distress. The trial court was right to grant the defendants' motion asking the court to overturn the jury's verdict on the other counts against them, the attorneys argue. The evidence did not prove defamation. The trial judge found that much of the content about Resnick was hyperbole or opinion, and no evidence clearly established that Karen Smith had acted with malice when she posted the comment that Cottrell had participated in the theft of Resnick's technology. The judge found that the "scam artist" comment also amounted to no more than hyperbole or opinion. And the trial court properly set forth why a breach of fiduciary duty claim does not hold up against Peggy Smith. As Cottrell's girlfriend, she owed him no fiduciary duty. As to the invasion of privacy, embarrassing facts "must be private or secret facts and not public ones" to qualify as a civil wrongdoing. Here, the trial court properly found that none of the information about Cottrell's extramarital affairs shared by Johnson with the others was private, as the women themselves had disclosed the information and they owed no duty to Cottrell to keep it private, the attorneys argue.

Attorney for Appellant (Cottrell): Tyler Dixon

Attorneys for Appellees (Smith, Johnson): Christopher Moorman, Nicholas Pieschel, Timothy Baxter

THE STATE V. BROWN ET AL. (S16A0122)

DeKalb County's District Attorney is appealing a judge's order prohibiting the admission of alleged gang-related crimes in Virginia when a group of young men go on trial in Georgia for murder.

FACTS: The State hopes to prove the following: On May 19, 2014, Sonia Williams and Shaniqua Camacho went to the home of Ms. Jaimee Harrell on Maypop Lane in DeKalb County. According to the State, the home was a gathering place for the "Nine Trey Gangsters," which is identified as a specific "set" of the "Blood" street gang. ("Set" refers to a group of gang members.) Among those at the house that day were gang members Malcolm Brown, also known as "Dot," Demetre Mason, aka "Flame" and "Assassin;" Frankland "Bad News" Henderson; Michael "Slim" Jenkins; and Katrina "Billy Jean" Shardow. Also affiliated with the group was Traon Turk, although the State claims he did not usually hang out at Harrell's home. On this

particular day, Sonia Williams and Malcolm Brown got into an argument and Brown ordered Jaimee Harrell and Katrina Shardow to beat up Williams, which they did, stealing her shoes and purse and throwing her out of the house. Shaniqua Camacho left with Williams who shouted she would have someone “handle” the situation for her. Because Brown did not want rival gang members to know where their particular gang sect congregated, he ordered that both Williams and Camacho be killed. Mason, Jenkins and Henderson then left the home on Maypop Lane in a stolen silver BMW to find the two women, who had left on foot. Both Williams and Camacho were later found shot to death at an apartment complex nearby. According to the State, the murder weapon was a gun Mason and Traon Turk had stolen in Douglas County.

As background for its case, the State claims in briefs that the Nine Trey Gangsters was created as one of the eight original Blood “sets” on the East Coast and since its inception, has been one of the most active. The State describes a hierarchy in which members are organized into “line-ups” or “families.” The “High Stain” appoints a “Lo Stain,” who has generals ranking from four stars down to one star who report to him. “Soldiers” or “Scraps” are the lowest ranking members in the gang, the State claims. Members of Nine Trey Gangsters often refer to themselves as “Billy Bad Ass,” and the DeKalb set refers to its hierarchy by floor level, so “5th Floor” represents the highest ranking member. Among common characteristics of the Blood gang and Nine Trey Gangsters sets are the refusal to use the letter “c” or the number “6,” both of which related to the rival “Crips” gang, the State claims.

In August 2014, Brown and the six others were indicted by a DeKalb grand jury in a 21-count indictment for violating the State’s “Street Gang Terrorism and Prevention Act” (Georgia Code § 16-15-1) and other violent crimes, including the double murder of Williams and Camacho. Five of the seven were indicted for violating the Racketeer Influenced and Corrupt Organizations (RICO) Act and two were indicted for armed robbery and hijacking a motor vehicle. In February 2015, the State filed a “Motion to Admit Evidence of Unindicted Criminal Gang Activity and in the Alternative Notice of Intent to Admit Evidence Pursuant to Georgia Code § 24-4-404 (b),” which allows the admission of evidence for the purpose of proving a number of things such as motive. Specifically, the State wanted to use a Virginia federal indictment of Virginia Blood gang members to prove that the defendants in this case were part of a gang, which the law defines as an organization of three or more persons who engage in criminal gang activity. Following a hearing, the judge denied the State’s motion, stating that evidence “of crimes committed by individuals not charged in the present case” was not admissible under § 24-4-404 (b). The judge further found that the Virginia federal indictment “would be highly prejudicial.” The State now appeals to the Georgia Supreme Court.

ARGUMENTS: The District Attorney argues that the State has the right under Georgia law to use evidence of other gang activity in order to prove its case, and the trial court erred in denying its motion to admit the Virginia federal indictment. The trial court’s order incorrectly states that the evidence is not admissible under § 24-4-404 (b). The indictment helps prove the existence of the gang through its use of common symbols, tattoos, terminology, behavior and other characteristics. “Because of the sometimes loose adoption of Blood gang ideals and characteristics, Blood gang sets are known to work with each other to achieve common goals,” the State argues in briefs. “As a result, the Blood gang, irrespective of the specific set, is an ‘enterprise’ because it is a group of people associated in fact, who have common goals, similar intents, and consistent methods of committing crimes.” The Virginia federal indictment and

convictions are “inextricably intertwined” with this case “because they provide background (history, nature, and structure) for the instant indicted offenses and because they establish the existence and nature of participation in gang activity by the Appellees [i.e. Brown and others] charged under the Act in the instant indictment,” the District Attorney argues. Furthermore, the trial court was required under Georgia Code § 16-15-9 to admit the federal indictment. That statute says that the commission of street gang activity “by any member or associate of a criminal gang *shall* be admissible in any trial or proceeding for the purpose of proving the existence of the criminal street gang and criminal gang activity.” “A plain reading of § 16-15-9 required the trial court to admit the 13-count Virginia federal indictment and convictions of compatriot Blood gang members,” the State argues. Although Brown and the others “are not directly connected to the crimes committed by the Nine Trey Gangsters gang defendants in the Virginia federal indictment, they specifically and intentionally adopted the vernacular, characteristics, structure, and behaviors of the NTG Bloods; and as such, all of them were able to benefit from the notoriety and infamous reputation of the NTG Bloods.” The NTG Bloods “is a nationally known gang with far-reaching ties to many areas within the country, including Georgia,” the State contends. “It is one of the original gang sets of the United Blood Nation. The aforementioned evidence from the Virginia federal indictment is necessary to show the common identifying names, signs, symbols, tattoos, and attire associated with the Blood gang.”

Attorneys for Brown and the others argue the trial court was correct in ruling the Virginia indictment was inadmissible under § 16-15-9. The State’s main focus is the **preamble** to the indictment which is the mere “concoction of a lone, out-of-state prosecutor, representing nothing more than that prosecutor’s unsubstantiated opinions.” The preamble makes general assertions about gang customs but draws no direct link to any of the defendants charged in that indictment. The Virginia indictment is also inadmissible as hearsay under Georgia law. “The State wants to admit the preamble as evidence in the murder trial of the Appellees, [who are] men and women unrelated in any discernable way to the defendants named in the Virginia indictment,” the State argues. The preamble is not evidence, and the trial judge correctly found no reason to introduce “evidence of **some other gang** in some other state.” The indictment is also inadmissible to show motive. Finally, the trial court properly concluded that the Virginia indictment was inadmissible under Georgia Code § 24-4-403 because the evidence is highly damaging to the defendants’ defense and bears little, if any, relevance to the crimes charged here.

Attorneys for Appellant (State): Robert James, District Attorney, Lenny Krick, Asst. D.A., Antonio Veal, Asst. D.A.

Attorneys for Appellee (Brown): Daryl Queen, Asst. Public Defender, Bryan Henderson, Asst. Public Defender