Supreme Court of Georgia
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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Wednesday, June 19, 2019

10:00 A.M. Session

MOBLEY V. THE STATE (S18G1546)

A man found guilty of vehicular homicide after colliding with a vehicle in **Henry County** and killing its two occupants is appealing his convictions, arguing that data obtained from his car's "airbag control module" should have been suppressed at trial because officers downloaded it before getting a warrant.

FACTS: On Dec. 15, 2014, **Victor Lamont Mobley** collided with another vehicle, killing the driver and passenger. When Henry County police officers arrived at the scene, witnesses told them that Mobley had crashed into the victims' car as it was making a left hand turn. None of the witnesses provided officers with information regarding the speeds of either vehicle, but the speed limit at the collision scene was 45 miles per hour. Based on the evidence at the scene, officers believed Mobley probably had been driving between 45 and 50 miles per hour immediately prior to the crash. However, because the crash ended with two fatalities, officers decided they needed to continue to investigate in order "to find out if there [were] any other extenuating circumstances that caused the collision itself." Consequently, one of the officers chose at the scene to download the data from the "airbag control module" (ACM) in both vehicles without first obtaining a search warrant. The officers later testified that they believed they did not need a search warrant prior to downloading the ACM data because they "had the

resources available at the time . . . to go ahead and just gather all the data that [they] could while [they were] on-scene."

The ACM in Mobley's vehicle was designed to capture data related to a collision or airbag deployment, including the car's speed, engine speed, brake status, throttle position, engine revolutions, the driver's seatbelt status, brake switch status, the time from maximum deceleration to impact, the time from vehicle impact to airbag deployment, and diagnostic information on the vehicle's systems. Accessing the data requires special equipment and special training is required to interpret the data retrieved. The data from Mobley's ACM showed that he actually had been driving at a rate of 97 miles per hour five seconds before airbag deployment. The cars were eventually towed from the scene and maintained at an impound lot. The next day, officers applied for a warrant to search and seize the ACMs from both vehicles. The purpose of the search warrant was to remove the ACMs from the vehicles and place them into an evidence locker. In applying for the search warrant, the affidavit in support did not inform the magistrate judge that officers had already collected the data from the ACMs. After obtaining the warrant, officers removed the ACMs from both vehicles, placed the devices into evidence storage, and did not access the ACM data again. Officers later testified that they could have applied for a search warrant prior to downloading the ACM data in this case, and if they had not downloaded the data, they would have done so at the impound lot after getting a search warrant.

Mobley's attorneys filed a pre-trial motion to exclude the data from evidence as having been the fruit of an unlawful warrantless search under the U.S. Constitution's Fourth Amendment, which protects against "unreasonable searches and seizures." The amendment states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation…." Following a hearing, the trial court denied Mobley's motion to suppress, finding it was unnecessary to decide whether a search warrant was required to access the data from the ACM because police obtained a search warrant the day after the data was accessed, and therefore the data inevitably would have been discovered "when the ACMs were properly removed from the vehicle pursuant to the search warrants." Following a June 6, 2017 bench trial (i.e. before a judge with no jury), Mobley was found guilty of two counts of vehicular homicide in the first degree, one count of reckless driving, and one count of speeding. He was sentenced to 15 years with the first seven to be spent in prison.

Mobley appealed to the Georgia Court of Appeals, which upheld the trial court's ruling. The intermediate appellate court concluded that Mobley "did not have a reasonable expectation of privacy with respect to the data captured by his vehicle's ACM" because members of the public and others could observe his vehicle's movement, speed and braking, either directly or through the use of technology such as radar guns or automated cameras. As a result, the Court of Appeals ruled, the retrieval of the data was not a search or seizure protected by the Fourth Amendment. Mobley now appeals to the Georgia Supreme Court, which has agreed to review the case to answer a number of questions, including whether the search and seizure of the airbag control module violated the Fourth Amendment.

ARGUMENTS: Mobley's attorneys argue that downloading the data from his car's ACM without a warrant was an "unreasonable Fourth Amendment search" that violated Mobley's property rights and privacy expectations. The Fourth Amendment "embraces two interrelated sets of interests: property and privacy," the attorneys argue. Thus, police conduct a Fourth Amendment search when "A) they trespass into a constitutionally protected space, even if

the information gathered there was not private," and when "B) they gather certain private information, even if they did not have to trespass to do so." The police in this case did both when they downloaded the data from the ACM in Mobley's car, the attorneys argue. To download the data, they had to physically intrude into Mobley's car and attach a cable to its diagnostic port. And the data they downloaded, which depicted Mobley's movement and actions immediately before the crash, were the type in which Mobley "exhibited an actual expectation of privacy," his attorneys contend. Among other arguments, they argue that the inevitable discovery exception did not apply "because the State did not prove that the airbag control module data would have been lawfully discovered." And Georgia Code § 17-5-30, as interpreted in the Georgia Supreme Court's 1992 decision in *Gary v. State*, forecloses the inevitable-discovery exception. In *Gary*, the state Supreme Court ruled that § 17-5-30 was the General Assembly's "unequivocal expression of its desire that evidence seized by means of a warrant that is not supported by probable cause be suppressed."

The State, represented by the District Attorney's office, argues that neither the U.S. Supreme Court nor the state Supreme Court "has ruled that a separate search warrant is required to access the ACM of a vehicle." Here, the search and seizure of the ACM did not violate the Fourth Amendment. "It was standard operating procedure in a fatality collision 'to investigate through and through,'" the State's attorneys argue. Two of the officers on the scene of the wreck testified that the ACM can be corrupted when vehicles are turned off and removed from a crime scene. "The officers had probable cause on scene to investigate the accident including the data on the ACM," the State argues in briefs. "There was no Fourth Amendment violation in downloading the ACM on site per standard operating procedure in fatality collisions." Even if this court determines that a search warrant was necessary, "federal constitutional law and Georgia law hold that the inevitable discovery exception to the exclusionary law applies," the State contends. "Under the inevitable discovery doctrine, if the State can prove by a preponderance of the evidence that evidence derived from police error or illegality would have been ultimately or inevitably discovered by lawful means, then the evidence is not suppressed as fruit of an impermissible search or seizure. Here, because police seized the physical ACM the next day, the officers "would have inevitably discovered the data showing the defendant was traveling 97 miles an hour in a 45-mile-per-hour zone." The State also contends that the decision in *Gary* does not apply as it does not bar the inevitable discovery exception to the exclusionary rule. And if it does apply, "it should be overturned to ensure predictability, functionality, and adaptability to rapidly changing technology," the State argues. "If the courts continue to translate § 17-5-30 through *Gary* and its broader and broader progeny, officers will never be able to keep abreast of changing rules and requirements. In the case at hand, officers were trained to download the ACM at the scene as part of initial on-site investigations and avoid damaging the data. No controlling court had found that ACMs in particular need a separate search warrant, nor have they since. No statute was in place at the time of this incident requiring a separate search warrant for the ACM." The state Supreme Court "should overrule *Gary*, to the extent that it has been expanded beyond its holding that a warrant without probable cause is invalid."

Attorneys for Appellant (Mobley): Brandon Bullard, James Bonner, Jr., Margaret Bullard
Attorneys for Appellee (State): Darius Pattillo, District Attorney, Sharon Hopkins, Asst. D.A.

COLLINS V. THE STATE (S19A0809)

A man addicted to prescription painkillers is appealing his convictions and two life prison sentences for the murder of his grandfather.

FACTS: According to briefs filed in the case, the morning of May 2, 2013, **Casey Collins** and his girlfriend, Sarah Cook, woke up "dope sick" from withdrawal from prescription pills. Collins and Cook lived at Cook's grandmother's house in Mableton, GA, **Cobb County**. The couple regularly got their pills from Collins's grandfather, Edward Ronald Smith, who ran a prescription pill scheme. Smith, 78, operated his business by transporting various people to doctors several times a month to get prescriptions for medications such as Xanax, Oxycodone, Dilaudid, and Somas. Smith would pay for the doctor visits and prescriptions. In turn, he would split the prescribed pills with the person who procured the prescription, then sell his half of the drugs to others for $15 to $20 a pill. Collins was one of the people Smith used to get the drugs.

On May 2, Collins and Cook, who were addicts, woke up nauseated from needing a pill, so they called Smith and asked him to bring them pills. Although Smith sometimes fronted them the pills, this day he took them to an ATM so Cook, who already owed him $700, could use her grandmother's debit card to pay him. Collins also owed Smith money. When Cook was unable to get into her grandmother's account, Smith took the couple back home. Both asked him to front them again for pills until they could pay him back, but Smith refused. Angry, the pair went inside and plotted how to kill and rob Smith, who remained parked in the grandmother's carport. According to Cook, who later testified for the State, Collins gave her a pocket knife and told her that when he signaled, she was to stab his grandfather. Collins and Cook returned to the carport and Cook got into the truck on the passenger side. She began begging Smith to front them some pills, but Smith again refused. Collins then gave the signal, and Cook stabbed Smith four times in the chest with the knife. When Smith tried fighting back, Collins removed his belt, wrapped it around Smith's neck, and strangled his grandfather for several minutes until he was dead. Collins removed several hundred pills and close to $1,000 from his grandfather's body, pushed the body into the backseat of the truck, and covered it with a tarp. Collins and Cook then went to their bedroom where they dissolved the pills and injected the drugs. They spent the rest of the afternoon on a shopping spree, injecting drugs along the way. With Smith's money, they purchased gas, an Xbox and video games, and a teaspoon set for dissolving more pills. Ultimately they disposed of Smith's truck and body at a set of condominiums off Six Flags Drive in Austell, then took a cab back to Cook's grandmother's house.

Three days later, Smith's mother and aunt became concerned about their father and filed a missing person's report. Through their investigation, Cobb County police tracked Smith's white Ford Ranger pickup truck to a Walmart store in Lithonia, and the store's surveillance video captured Collins and Cook going from the struck into the store. The investigation ultimately led to Collins and Cook, who were arrested for Smith's murder. Later police found Smith's pickup truck at the Saddlebrook Condominiums and discovered his body in the backseat. The medical examiner determined he had died from strangulation. In a plea arrangement, Cook pleaded guilty to armed robbery and aggravated assault and was sentenced to 25 years, with 15 to be served in prison. In exchange for the deal, she agreed to testify against Collins. Following the May 2015 trial, the jury found Collins guilty of malice murder, felony murder, armed robbery, aggravated assault, and concealing the death of another. He was sentenced to two life-without-parole prison sentences plus 10 years. Collins now appeals to the Georgia Supreme Court.

ARGUMENTS: The attorney for Collins's appeal argues that the trial court erred by refusing to grant a new trial based on the ineffective assistance Collins received from his trial attorney, in violation of Collins's constitutional rights. Specifically, his trial attorney failed to attempt to introduce evidence of the sexual abuse by his grandfather who was also the alleged victim in the case. That abuse would have been evidence of the provocation necessary for the jury to be instructed about the less serious crime of voluntary manslaughter. Collins's trial attorney had hired a forensic psychologist, Dr. Kevin Richards, to perform a basic mental health evaluation to see if he could find anything that could be useful to Collins's defense. During the evaluation, Collins revealed to Richards that his grandmother had sexually molested him from early childhood to middle-school age. Collins also revealed that his grandfather allowed others to abuse him but he could not identify them because they wore animal masks. Collins said he was thinking of the abuse when he had the belt around his grandfather's neck and remembered the pain his grandfather had inflicted on him as a child. Richards determined that Collins suffered from Post-Traumatic Stress Disorder (PTSD). "Thinking about the pain and humiliation of being sexually molested by a family member and that family member allowing others to sodomize you would amount to 'serious provocation to excite such passion in a reasonable person,'" Collins's attorney argues in brief's, quoting the definition of voluntary manslaughter as written in the Georgia Code. "Had the jury had the option of finding the Appellant (i.e. Collins) guilty of manslaughter instead of malice or felony murder, and heard evidence that the victim molested the Appellant, they could have easily found the Appellant guilty of manslaughter only." The trial court also erred in refusing to grant a new trial based on the refusal of Collins's trial attorney to withdraw as his attorney after Collins filed a complaint with the State Bar of Georgia, alleging ethical violations, his attorney argues.

The State, represented by the District Attorney's and Attorney General's office, argues that Collins received effective counsel by his trial attorney. Once presented with the complete facts related to Collins's mental state – facts that Collins did not present to his own expert witness – Dr. Kevin Richards equivocated and testified that his ability to testify in Collins's favor was diminished, the State contends. "Even assuming, arguendo, that evidence of Collins's PTSD was admissible, there is no evidence or legal authority that he could present that he was suffering from PTSD at the time Collins murdered his grandfather," the State argues in briefs. "Collins's own expert testified that he only came to the conclusion, i.e. that the defendant suffered from PTSD as a result of previous sexual abuse, on the basis of interviews with Collins, in which he was later shown to have been untruthful." Among the facts Collins concealed from Richards was that he participated in his grandfather's illegal drug operation; his attack was motivated by his grandfather's refusal to continue fronting him drugs; Collins timed the attack for a day his grandfather would have a large amount of cash; Collins plotted with his girlfriend to kill his grandfather; and Collins had "gotten over" the history with his grandfather years before he strangled him to death. Richards testified that knowing these facts and others "would have lessened the likelihood that he would have been able to testify on the defendant's behalf at trial," the State argues. Therefore, Collins's trial attorney "was not deficient in making the strategic decision not to present the expert's testimony concerning PTSD," the State argues. Also, "Collins's bar complaint, standing alone, was not cause for trial counsel to withdraw as counsel," the State contends. "In addition, Collins's contentions that he received ineffective assistance of counsel ignores the overwhelming evidence of guilt supporting his convictions."

Attorney for Appellant (Collins): M. Joel Bergstrom
Attorneys for Appellee (State): John Melvin, Acting District Attorney, Michael Carlson, Chief Asst. D.A., John Edwards, Sr. Asst. D.A.

EBERHART V. THE STATE (S19A0803)

A former police officer in **Fulton County** is appealing his felony murder conviction for tasing a suspect who subsequently died.

FACTS: The State presented the following at trial: The afternoon of April 11, 2014, 24-year-old Gregory Towns Jr. died after East Point Police Officers **Marcus Eberhart** and Howard Weems, Jr. applied a Taser device to his body. Earlier that day, police had received a call regarding a domestic disturbance at the apartment of Towns's girlfriend. Officer Nicole Allen was the first to arrive and, after identifying Towns at the entrance of the apartment complex, called out to him. Towns ignored Officer Allen and walked past her. Allen's partner, Officer Irvin Johnson, arrived moments later and informed Towns they were going to detain him until they could sort out the domestic disturbance issue. But when he placed his hand on Towns's forearm to handcuff him, Towns slapped it away and took off running into nearby woods. After running about a quarter of a mile, Towns tripped and Johnson was able to catch up. Johnson handcuffed and arrested Towns for eluding arrest and fleeing, then called for backup. Both Towns and Johnson were exhausted from the run. Towns was 6' 6" tall and weighed 281 pounds. He did not fight or struggle with Johnson, and the two remained in the woods, catching their breath and waiting for backup. A few minutes later, Officers Weems and Rachel Robinson arrived at the scene. At 3:17 p.m., Johnson radioed in for an ambulance, hoping to obtain water and oxygen for both Towns and himself. Eberhart, who was the highest ranking officer in the group, heard the radio call and canceled the ambulance, instructing the officers to wait until he arrived. While waiting for Eberhart, the officers instructed Towns to get up and make his way out of the woods. Towns told the officers he was too tired to proceed. The officers attempted to help him to his feet, but were unable to do so. Although Towns attempted to walk out of the woods on his own, he stumbled and fell each time he tried to walk. Eberhart arrived on the scene at 3:23 p.m. He instructed Towns to walk toward the patrol cars, but Towns said he was too tired. According to witnesses, Eberhart then stated to Weems, "If he don't want to get up, tase his a**." Towns, still in handcuffs, again attempted to get up and after taking one step fell to the ground. With the Taser in "drive-stun" mode, Weems tased Johnson on his stomach. Records from the device indicated that the trigger on Weems' Taser was pulled four times. Towns said, "Give me a second. I'm tired," and again attempted to get up, but again collapsed. Eberhart then approached Towns as he sat in the creek and tased him at least two additional times. Records from Eberhart's device indicated that the trigger on his Taser, which was also in "drive-stun" mode, had been pulled 10 times. By this point, Towns had stopped talking, according to witnesses. After additional efforts to help Towns up failed, Eberhart called an ambulance for a "welfare check."

Fire and rescue were dispatched at 3:49 p.m. Shortly before they arrived, Towns became unresponsive and his eyes closed. The paramedic immediately requested that Towns's handcuffs be removed so they could perform CPR. The fire and rescue teams were able to get Towns on a backboard and carry him up to the ambulance. Paramedics performed chest compressions,

despite evidence that Towns's heart had already stopped. Towns was brought into the emergency room and pronounced dead at 4:33 p.m.

The medical examiner determined that Towns died due to hypertensive cardiovascular disease exacerbated by physical exertion and "conducted electrical stimulation." Significant contributing factors included sickle cell trait, dehydration, and obesity. The coroner determined that the external infliction of pain through the use of the Taser was a contributing factor in the cause of Towns's death. An expert witness for the defense testified that the Taser did not contribute to Towns's death.

In August 2015, Eberhart and Weems were indicted for felony murder, aggravated assault, involuntary manslaughter, reckless conduct, and violation of oath by a public officer. Several law enforcement officers testified at trial that Eberhart had violated the standard operating procedures of the East Point Police Department and general guidelines for the use of a Taser in "drive-stun" mode. The use of a Taser while a suspect is handcuffed is not authorized unless "exigent circumstances exist." Eyewitness testimony at trial indicated that, after the victim was handcuffed and placed under arrest, he did not kick, scream, or curse or present a threat to himself or anybody else. East Point Police Chief Woodrow Blue and two captains testified they did not find any evidence of "exigent circumstances" and that repeatedly "drive-stunning" the victim with the Taser, in an effort to get the victim to walk, was not authorized by the East Point standard operating procedures. Blue said Eberhart was terminated as a result.

Following a joint trial in December 2016, the jury found Eberhart guilty of all charges and he was sentenced to life in prison. Weems was found guilty of involuntary manslaughter, reckless conduct and violation of oath by public officer. He received a First Offender sentence of five years with 18 months to serve in prison and the balance on probation. Eberhart now appeals to the Georgia Supreme Court.

ARGUMENTS: Eberhart's attorneys argue that the state's high court should vacate and dismiss his convictions. "The evidence was insufficient to support the convictions in the indictment because use of a Taser device in drive-stun mode as here is not an inherently dangerous device, nor were there any attendant circumstances known to the defendant indicating that it posed any danger to the victim," the attorneys argue in briefs. The expert testimony at trial about whether the "drive stuns" to Towns had anything to do with his death was "hotly disputed," the attorneys argue. "After all, there was no dispute that Mr. Towns weighed almost 300 pounds, was suffering from heart disease, including an enlarged heart, and most important of all, had the sickle cell trait, which perhaps was not fully even known to him. All of the witnesses testified that Mr. Towns's fleeing to avoid arrest aggravated all of his conditions and as one expert witness testified, Mr. Towns was already in the process of dying when the police caught up to him. There is no question that the combination of Mr. Towns's fragile health exacerbated by his flight from the police was the primary if not the sole cause of this death." Witnesses for the defense "testified unequivocally that the drive stun was not even a factor in the death of Mr. Towns." Incorrect assumptions were made about the Taser in the State's contention that the drive stun was directly applied to Towns up to 14 times. The activation download "merely shows how many times the trigger was actually pulled, not how many times the conducted electrical weapon made contact with a suspect," the attorneys argue. Officers who were witnesses to the incident testified at trial that Towns was "drive tased" a total of only three to four times by Eberhart and Weems. One thing is absolutely clear, the attorneys argue, and that is that the "Taser device in

drive-stun mode is specifically designed to be a non-fatal means of causing compliance by a non-compliant suspect and there was nothing about the attendant circumstances known to the officers, such as Mr. Towns's health issues, which would have caused them to believe that the drive-stun would in any way pose a danger to Mr. Towns." "Officer Eberhart's use of the Taser in drive-stun mode was not intended to cause serious bodily harm to Mr. Towns." Furthermore, there was "no evidence that a conducted electrical weapon in drive-stun mode has ever caused a death or a serious bodily injury to an in-custody suspect," Eberhart's attorneys argue.

The State, represented by the District Attorney's and Attorney General's offices, argues the evidence at trial was sufficient to support the jury's verdict against Eberhart. Regarding the felony murder conviction, the evidence authorized the jury to conclude that Eberhart caused Towns's death, the State's attorneys argue in briefs. "The jury in this case heard expert testimony from three witnesses that the enormous pain caused by Appellant's (i.e. Eberhart's) application of the Taser either materially accelerated the victim's death, materially contributed to it, or both." The evidence also was sufficient to support the jury's guilty verdict on the predicate felony of aggravated assault, the State contends. The jury heard evidence that Eberhart "assaulted the victim by applying a Taser to his body numerous times while the victim was in handcuffs, all in violation of police protocol," the State argues. Whether an object is a weapon "likely to cause serious bodily injury" is up to the jury to determine, based on the facts and circumstances of a particular case. Here, Eberhart's own former colleagues, including two police captains, testified that the Taser could create "astonishing amounts of pain" when applied in drive-stun mode. "The jury heard evidence on Appellant's repeated use of the Taser against the handcuffed, passively resistant victim as a 'prod,' in unquestioned violation of his own department's protocol," the State argues. Because Eberhart's oath required him to follow the law, and because the evidence shows he committed both felony murder and aggravated assault, "the evidence was sufficient to sustain his convictions for violation of oath as well," the State contends. Eberhart's attorneys argued that the medical testimony at trial was "often contradictory, conflicting, sometimes vague, and ultimately unsatisfying." Eberhart points out that the defense expert witness testified that the Taser did not contribute to Towns's death. However, "it was the jury's task to determine the credibility of the witnesses and to resolve any conflicts or inconsistencies in the evidence," the State contends.

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Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Lyndsey Rudder, Dep. D.A., F. McDonald Wakeford, Asst. D.A., Christopher Carr, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Katherine Emerson, Asst. A.G.