

IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA)
)
vs.) CASE NO.: SU-23-CR-0039-S
)
JABBARY ANTIONE STEVENS,)
)
Defendant.)
_____)

TRANSCRIPT OF MOTION TO SUPPRESS,
PLEA IN BAR, MOTION TO DISMISS

Heard before the Honorable Lawton E. Stephens, Judge of the Superior Courts of the Western Judicial Circuit, in the Athens-Clarke County Courthouse, 325 East Washington Street, Athens, Georgia, on September 18, 2023.

A P P E A R A N C E S:

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1 THE COURT: We have some motions on Jabbary Stevens.
2 Come on up, Mr. Stevens. Motion to suppress, plea in bar,
3 motion to dismiss. So we'll take up the plea in bar
4 first.

5 MR. WILLIAMS: And, Your Honor, I want to narrow --
6 if I may.

7 THE COURT: Yeah.

8 MR. WILLIAMS: I want to narrow the issue down.
9 Count -- Count 2 of the current indictment is against an
10 Esmeralda Heredia-Carias. And I will -- I will give a
11 little bit of an argument with regards to the other
12 counts. But specifically in that count, she was an adult.
13 She was 26 years old at the time. This is now -- we --
14 the indictment came after four years.

15 Now with the children, my understanding of 17-3-1 is
16 that anyone under eighteen, there is a seven-year statute
17 of limitations for the victim under eighteen. Obviously,
18 I -- I think that was designed for outcry cases. But in
19 this case, I think it might apply.

20 However, I do want to focus on Count 2. The old
21 indictment, Your Honor, the one that they are relating
22 back to that was actually charged within the statute of
23 limitations -- the old indictment on Count 3, serious
24 injury by vehicle, without malice did cause bodily harm,
25 depriving said person of her body -- of a member of her

1 body through violation of Code Section 40-6-391(a)(6),
2 which is driving under the influence.

3 THE COURT: You're looking at the original --

4 MR. WILLIAMS: The original indictment, Your Honor.
5 I don't have the number --

6 THE COURT: Okay. I don't have that.

7 MR. WILLIAMS: -- in front of me. But that's from --
8 that was within the statute of limitations.

9 THE COURT: Right.

10 MR. WILLIAMS: They had one month left within the
11 statute of limitations. And they charged that with
12 regards to his -- Esmeralda Heredia-Carias.

13 The new indictment, the same count -- it's Count 2,
14 the same charge -- by driving a Kia Sorento motor vehicle
15 on Lexington Road in a manner exhibiting reckless
16 disregard for safety of persons and property, crossing
17 multiple lanes of traffic into travel -- or excuse me --
18 multiple lanes of travel, into traffic traveling the
19 opposite direction, striking the vehicle after consuming
20 marijuana and cocaine. Okay? So there's multiple things
21 added.

22 And I want to point out the Outen case, Your Honor.
23 This was out of Judge Sweat's courtroom in -- it's a 2013
24 case. Providing a copy to the district attorney's office.
25 And if you're going to relate back, Your Honor, to the old

1 indictment, you can't add or expand those things if it's
2 going to be outside of the statute of limitations. And
3 that's exactly what we have here. Your Honor, may I
4 approach? I have a copy of that case for you if you need
5 it.

6 THE COURT: Yeah.

7 MR. WILLIAMS: I want to point out that I've
8 highlighted some relevant portions. And those portions
9 just being that the expansion of that charge you can't
10 relate back to the initial indictment. The specific
11 expansion of that charge in this case is that they never
12 mention marijuana in the original case. So the marijuana
13 has been added. And the reckless driving act has been
14 added, traveling in the different lanes. And it is far
15 outside of the statute of limitations.

16 I'm asking this Court to dismiss Count 3 -- no, I'm
17 sorry -- Count 2 of this current indictment. It was
18 outside of the statute of limitations and the Outen case
19 is clear that they can't expand that.

20 THE COURT: The Outen case?

21 MR. WILLIAMS: Yes sir. Is that the one you have
22 right there?

23 THE COURT: You handed me Garrison.

24 MR. WILLIAMS: Oh, I'm sorry, Your Honor. I handed
25 you the wrong one.

1 THE COURT: That's all right.

2 MR. WILLIAMS: Garrison is recent. That's a very
3 recent case. And that one speaks to the same thing. This
4 is Outen right here.

5 THE COURT: Relation back.

6 MR. WILLIAMS: Your Honor, if I may approach. And
7 Garrison -- here's Garrison. It just kind of restates the
8 same thing, that if you add and expand the factual
9 scenario that does not relate back to the original charge.
10 So I would specifically ask this Court to dismiss Count 2
11 of the current indictment for it being outside of the
12 statute of limitations.

13 And just for the record, Your Honor, I do believe it
14 does state in 17-3-1 that the counts against the children,
15 you would have seven years to accuse. So I'm not going to
16 make an argument regarding -- I would just state that, you
17 know -- I mean, legislative intent, that's usually for an
18 outcry case. I do understand it's the law. But that's
19 not the type of situation we have here. Obviously, this
20 was a car accident that was addressed immediately. So
21 this doesn't involve an outcry of a child. However, that
22 is the law under 17-3-1.

23 THE COURT: All right. So are you withdrawing your
24 motion as to the other counts?

25 MR. WILLIAMS: No sir. I'm going to leave that in

1 there just for the record. I do understand, Your Honor,
2 that -- I mean, it's -- the argument is much less rooted
3 in case law. It's more of a -- you know, a constitutional
4 argument that this is not the intention of the extension.
5 However, with regards to Count 2, I believe we have a very
6 clear argument. With regards to those, it's more of a
7 legislative intent argument. So I will maintain that, but
8 specifically I'm going to ask for Count 2.

9 THE COURT: Okay. I'll hear from the State.

10 MR. HUNTER: Your Honor, I believe Mr. Williams is
11 correct about the change in the -- from the first
12 indictment to the second indictment. So the State doesn't
13 have any further argument beyond that it's for the Court
14 to make a decision.

15 THE COURT: You're conceding that I need to dismiss
16 Count 2 of the new indictment?

17 MR. HUNTER: Yes sir.

18 MR. WILLIAMS: And I could prepare an order for the
19 Court, Your Honor.

20 THE COURT: Okay. What about the rest of it? Are
21 you ready to argue that -- the motion to dismiss and plea
22 in bar?

23 MR. HUNTER: Well, Your Honor, the State would stand
24 by the indictment, that those would not be subject to
25 dismiss.

1 THE COURT: Why not?

2 MR. HUNTER: Well, we would contend that there has
3 not been a change within the statute of limitations for
4 each and every one of those charges.

5 THE COURT: So when do you think -- what was the
6 deadline for y'all to have indicted -- reindicted the
7 case? What would've been the deadline?

8 MR. HUNTER: [No verbal response.]

9 THE COURT: Are you saying that it's seven years on
10 each one of these counts except for Count 2 because you
11 added new stuff? Is that -- is that the State's
12 contention?

13 MR. HUNTER: Well, only -- only with respect to Count
14 2 is the one we concede that that one --

15 THE COURT: Right. So what -- what's the -- what's
16 the statute on 1, 3, 4 and 5? What's the -- what's the
17 deadline for -- for indicting on a February 11th, 2018?
18 What's the statute? When would it have run out?

19 MR. HUNTER: Four years from February 2018.

20 THE COURT: All right. So the statute ran in
21 February of 2022, but y'all reindicted in January of 2023.
22 So how is that within the statute? Are you saying it
23 relates back somehow?

24 MR. HUNTER: Yes sir.

25 THE COURT: Are you arguing that it was extended by

1 the emergency order --

2 MR. HUNTER: Yes sir.

3 THE COURT: -- of the Supreme Court? Okay. I'll
4 hear your argument then.

5 MR. HUNTER: Yes sir. The -- during the course of
6 the pandemic, the Supreme Court did toll the running of
7 time on statute of limitations. I believe that may have
8 been from maybe July 2020 until maybe it was January 2022.
9 I don't exactly recall. But during that time the State
10 would submit that the Supreme Court did toll the statute
11 of limitations until the emergency order was lifted.

12 THE COURT: And when was -- when was that?

13 MR. HUNTER: I believe the order was lifted in either
14 January or March of 2022.

15 THE COURT: Anything else you want to say?

16 MR. HUNTER: No sir.

17 THE COURT: All right. Well, I'll have to look at
18 it. Are we ready on the Jackson-Denno? Are we ready on
19 the motion to suppress statements?

20 MR. WILLIAMS: The defense is ready, Your Honor.

21 THE COURT: Are you ready, Mr. Hunter?

22 MR. HUNTER: [No verbal response.]

23 THE COURT: You may call your first witness, please.
24 We'll go ahead and proceed on that motion.

25 MR. HUNTER: If I can have a moment, Judge.

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THE COURT: Yeah.

[Briefly off the record.]

THE COURT: It's a motion to suppress. I scheduled it on July the 5th. It's the motion to suppress the statement. So we'll go ahead now and hear that motion. So you need to call your first witness, please.

MR. HUNTER: Any officers here in this case? Your Honor, at this time the State would ask the Court to allow a continuance.

THE COURT: On what ground, Mr. Hunter? I scheduled this on the 5th of July.

MR. HUNTER: Yes sir.

THE COURT: Have you subpoenaed the witness for this hearing?

MR. HUNTER: Judge, I'm not aware of who was subpoenaed.

THE COURT: I'm asking you --

MR. HUNTER: I did not.

THE COURT: If you're not aware of it -- it would be your responsibility to make sure your witness was subpoenaed. So have you -- have you made sure the witness for this Jackson-Denno hearing which I scheduled July the 5th has been subpoenaed?

MR. HUNTER: No sir.

THE COURT: Has not been subpoenaed. Why not?

1 MR. HUNTER: No, I'm not saying it hasn't -- the
2 person has not been subpoenaed. I did not subpoena --

3 THE COURT: Okay. Well, you need to find out whether
4 or not that person is under subpoena and tell me. Because
5 unless you have subpoenaed the witness, then you're not
6 necessarily entitled to have a continuance based upon the
7 absence of a witness. I'd like to know why the witness
8 wasn't subpoenaed when I scheduled this hearing on the 5th
9 of July.

10 MR. HUNTER: All right.

11 THE COURT: How much time do you need? Two and a
12 half months is not enough to subpoena a witness to a
13 Jackson-Denno hearing? I mean, seriously.

14 MR. HUNTER: Absolutely.

15 THE COURT: So you need to tell me whether the
16 witness has been subpoenaed.

17 MR. HUNTER: Yes sir.

18 THE COURT: Yes or no?

19 MR. HUNTER: Your Honor, if the -- I don't even know
20 who the witness is.

21 THE COURT: Okay. Well, that answers my question.

22 MR. HUNTER: I mean, if it's Trooper Kitchens,
23 Trooper Kitchens was in a major accident and the State --

24 THE COURT: Well, you've already answered my question
25 because you're saying you don't even know who the witness

1 is who took the statement from the defendant. You don't
2 know who it was. Then if you don't know who it was, then
3 I can't imagine that you would've put them under subpoena.

4 MR. HUNTER: Well, as I said, I believe it's Trooper
5 Kitchens. Trooper Kitchens was subpoenaed in July and
6 that was evidently July 10th. And she is the trooper,
7 Your Honor, who the State advised the Court last week was
8 out on medical leave.

9 THE COURT: I have never -- I have not been advised
10 that a witness was under subpoena for this hearing and
11 that they were not going to be able to appear. I don't
12 know where you get that information from. When was I
13 advised that that witness was unavailable?

14 MR. HUNTER: Well, I sent a notice to your office to
15 Ms. Russell.

16 THE COURT: That the witness that was subpoenaed for
17 this hearing was unavailable?

18 MR. HUNTER: Well, it's Trooper Kitchens and I
19 believe the email that I sent was related to --

20 THE COURT: Did you send a copy to Mr. Williams?

21 MR. HUNTER: So --

22 MR. WILLIAMS: I do --

23 MR. HUNTER: -- I did send a copy to Mr. Williams of
24 the email. It was related to someone on the trial
25 calendar.

1 THE COURT: It wasn't related to this hearing.

2 MR. HUNTER: No sir. But it's -- it is the same
3 trooper.

4 THE COURT: All right. So you're asking for a
5 continuance.

6 MR. HUNTER: Yes sir, unfortunately.

7 THE COURT: Any objection?

8 MR. WILLIAMS: No, Your Honor, I won't give an
9 objection. I think -- Your Honor, I don't have an
10 objection. We can reset this.

11 THE COURT: All right. I'll continue it.

12 MR. HUNTER: Your Honor, just for a point of
13 clarification, Trooper Kitchens was evidently involved in
14 the case as the lead trooper. There is another trooper, a
15 CJ Choy, who may have taken this statement based upon
16 representations --

17 THE COURT: You know what?

18 MR. HUNTER: Yes sir.

19 THE COURT: It is your responsibility to determine
20 the witness that you need to call to prove that any
21 statement made by the defendant was freely and voluntarily
22 given. I don't need the names here. You just need to
23 figure out who you need to call and you need to put them
24 under subpoena and you need to get them here. Is that
25 clear?

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MR. HUNTER: Yes sir.

THE COURT: And when I schedule something the 5th of July for the 18th of September, that's plenty of time to get that done, to discover who the witness is you need to prove it and get them under subpoena and get them here. Okay?

MR. HUNTER: Yes sir.

THE COURT: All right.

[Proceeding is concluded.]

CERTIFICATE

STATE OF GEORGIA

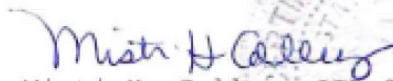
COUNTY OF JACKSON

I, Misti H. Colley, Certified Court Reporter, -2516, hereby certify that the foregoing pages numbered 2 through 13 constitute a true, complete and accurate transcript of motion to suppress, plea in bar, motion to dismiss in the case of State v. Jabbarly Antione Stevens, heard before the Honorable Lawton E. Stephens, Judge of the Superior Courts of the Western Judicial Circuit, Athens-Clarke County Case No. SU-23-CR-0039-S, taken down by me and transcribed under my supervision to the best of my ability.

I further certify that I am a disinterested party to this action and that I am neither of kin nor counsel to any of the parties hereto.

This certification is expressly withdrawn and denied upon disassembly, photocopying, or duplication in any manner or upon certification of the foregoing transcript or any part thereof by any person or entity other than by me. This certification is further expressly withdrawn and denied absent my original signature and original seal appearing hereon below.

In witness whereof, I hereby affix my hand on this the 22nd day of September, 2023.


Misti H. Colley, CCR-2516

