

SUPREME COURT OF GEORGIA

Abbott v. State

No. S21A0075, Supreme Court of Georgia (May 17, 2021)

SUMMARY

The Supreme Court of Georgia affirmed murder convictions, holding that the trial court did not plainly err in allowing a witness with a prior blood-alcohol content of .03 to testify after her BAC returned to zero, as she showed no impairment. The court also found no abuse of discretion in admitting evidence of the defendant's theft of a four-wheeler as intrinsic evidence completing the story of the crimes and showing motive, rather than improper character evidence under OCGA § 24-4-404(b). Finally, the court rejected a Brady claim for failure to disclose an alleged deal with a jailhouse informant, as the defendant offered only speculation and the record showed no agreement existed.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	LaGrua
JURISDICTION	Georgia
DECIDED	May 17, 2021
DOCKET	S21A0075
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court of Floyd County
STANDARD OF REVIEW	Plain error for the first enumeration (witness impairment); abuse of discretion for the second enumeration (admission of intrinsic evidence); and the Brady standard for the third enumeration.
PRECEDENTIAL VALUE	published
PARTIES	Emerson Mack Abbott v. The State

TOPICS

[criminal procedure](#) [evidence](#) [standard of review](#) [due process](#)

PRACTICE AREAS

[criminal law](#) [evidence](#)

QUESTIONS PRESENTED

1. Whether the trial court erred by allowing Kelly McCleskey to testify while under the influence of alcohol.
2. Whether the trial court erred by admitting evidence of Appellant's theft of a four-wheeler as intrinsic evidence.
3. Whether the State violated *Brady v. Maryland* by failing to disclose an alleged agreement with witness Michael Lehr.

HOLDINGS

1. There was no error, plain or otherwise, in allowing McCleskey to testify because she was not impaired at the time of her testimony.
2. The trial court did not abuse its discretion in admitting the theft of the four-wheeler as intrinsic evidence because it was part of the chain of events leading to the murders and provided insight into motive and premeditation.
3. No Brady violation occurred because Appellant failed to establish the existence of any deal between the State and Lehr.

KEY QUOTATIONS

“To establish plain error, Appellant must not only show the existence of an error but also show that (1) the error was not affirmatively waived by the appellant; (2) the error is 'clear or obvious, rather than subject to reasonable dispute'; (3) the error 'affected the appellant's substantial rights'; and (4) 'the error seriously affects the fairness, integrity or public reputation of judicial proceedings.'” (at 8)

“Intrinsic evidence is defined as evidence that (1) pertains to an uncharged offense arising from the same transaction or series of transactions as the charged offense; (2) is necessary to complete the story of the crime; or (3) is inextricably intertwined with the evidence regarding the charged offense.” (at 10)

“Evidence pertaining to the chain of events explaining the context, motive, and set-up of the crime is properly admitted if it is linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury.” (at 11)

*“The [S]tate is under a duty to reveal any agreement, even an informal one, with a witness concerning criminal charges pending against that witness, and a failure to disclose such an agreement constitutes a violation of the due process requirements of *Brady v. Maryland*.” (at 13-14)*

FACTUAL BACKGROUND

On January 23, 2015, James and Myra Reeves were found dead in their Floyd County home, both victims of recently inflicted shotgun wounds. Appellant lived next door and was a person of interest after he interjected himself into the investigation. Evidence showed he cashed a \$7,500 check from the Reeves' account on the day of the murders, redeemed a repossessed car with cash, and made incriminating statements to a jail cellmate.

PROCEDURAL HISTORY

Appellant was tried and convicted in Floyd County Superior Court. He filed a timely motion for new trial, which was denied. After an initial untimely notice of appeal was dismissed, he was granted an out-of-time appeal and filed a timely notice of appeal.

DISPOSITION

affirmed

CASES CITED

- Davenport v. State, 309 Ga. 385, 399 (846 SE2d 83) (2020)
- McGarity v. State, 2021 WL 954749 (Ga. 2021)
- Geter v. State, 231 Ga. 615, 617 (203 SE2d 195) (1974)
- Smith v. State, 302 Ga. 717, 725 (4) (808 SE2d 661) (2017)
- Harris v. State, 310 Ga. 372, 377 (2)(b) (850 SE2d 77) (2020)
- McKelvey v. State, 2021 WL 769435 (Ga. 2021)
- Priester v. State, 309 Ga. 330, 333 (2) (845 SE2d 683) (2020)
- Smith v. State, 307 Ga. 273 (2)(c) (citation not fully given in text)
- Younger v. State, 288 Ga. 195, 200 (4) (702 SE2d 183) (2010)
- Sherman v. City of Atlanta, 293 Ga. 169, 174 (4) (744 SE2d 689) (2013)
- Brannon v. State, 298 Ga. 601, 605 (3)(a) (783 SE2d 642) (2016)
- Brady v. Maryland, 373 U.S. 83 (83 SCt 1194, 10 LE2d 215) (1963)