

Kenneth Shepherd Has His Day in Georgia's Supreme Court

KENNETH SHEPHERD VS. THE STATE OF GEORGIA S05A1561



On September 7, 2005 the case of Kenneth Shepherd, convicted of murder and a victim of severe psychosis, was argued before the Supreme Court of Georgia. Mr. Shepherd is appealing a DeKalb County jury verdict finding him Not Guilty of Malice Murder by Reason of Insanity and Guilty But Mentally Ill on the charge of Felony Murder. This is a case of first impression and places the mentally ill client in the unusual position of having been given two judgments for one actual murder. If the sentence is not remanded by the Georgia Supreme Court, he will have to served an indeterminate sentence at a Mental Hospital under the jurisdiction of the Department of Human Resources, then once he is released from that commitment he will then be transferred to the Department of Corrections to serve out a Life sentence based on the Guilty But Mentally Ill verdict. Additionally, the possibility of Mr. Shepherd being transferred to prison and a life sentence wouldn't give him much incentive to respond to mental health treatment.

Mr. Shepherd's trial attorneys were Ms. Claudia Saari and Mr. Bob Storms. At trial, it was undisputed that Mr. Shepherd suffers from severe psychosis. The facts brought out at trial were that he shot his younger sister while under a delusional compulsion and that he did not possess the mental capacity to distinguish right from wrong. It is believed that Mr. Shepherd believed that he was defending himself against his sister's sexual aggression. With the NGRI verdict, it cannot be determined under what insanity theory that the jury believed that Mr. Shepherd was laboring under. The main issue at trial was his mental state at the time of the offense. Mr. Gerard Kleinrock, Mr. Shepherd's appellate counsel, argued the point succinctly before the Justices during oral arguments, and pointed out that the NGRI verdict, which involved a finding of insanity, was mutually exclusive of the verdict of Guilty but Mentally Ill, which necessarily involved a finding that at that very same moment he was merely "mentally ill." In addition, having two different judgments imposed for a single homicide raises a substantial double jeopardy issue. The State originally presented a waiver argument, which was that the two verdicts weren't necessarily irreconcilable. The State abandoned the waiver argument, during the oral arguments before the Supreme Court Justices.

The Office of the Mental Health Advocate filed an amicus brief urging that the civil commitment to DHR, which is technically an acquittal, trumps the criminal judgment and could not be disturbed in further proceedings. The questions that the Justices asked both counsel suggested that they were sympathetic to Mr. Shepherd's legal position. The DeKalb County District Attorney's office had the difficult task of providing justification for Mr. Shepherd serving two incompatible verdicts.