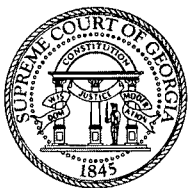


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SUPREME COURT OF GEORGIA
Case No. S17C0365

Atlanta, April 17, 2017

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

AARON OBEGINSKI v. THE STATE

The Supreme Court today denied the petition for certiorari in this case. All the Justices concur, except Boggs, J., disqualified.

Court of Appeals Case No. A16A0089

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

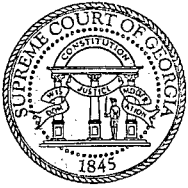
I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes

, Clerk

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SUPREME COURT OF GEORGIA
Case No. S17C0365

Atlanta, May 15, 2017

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

AARON OBEGINSKI v. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Boggs, J., disqualified.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes
, Clerk

SECOND DIVISION
BARNES, P. J.,
COGGS and RICKMAN, JJ.

NOTICE: Motions for reconsideration must be
physically received in our clerk's office within ten
days of the date of decision to be deemed timely filed.
<http://www.gaappeals.us/rules>

August 3, 2016

NOT TO BE OFFICIALLY
REPORTED

In the Court of Appeals of Georgia

A16A0089. OBEGINSKI v. THE STATE.

BARNES, Presiding Judge.

Aaron Leigh Obeginski's conviction for aggravated child molestation and two counts of child molestation was affirmed on direct appeal in *Obeginski v. State*, 313 Ga. App. 567 (722 SE2d 162) (2012). Acting pro se while incarcerated, Obeginski filed a writ of habeas corpus and an application for an arrest warrant for the deputy sheriff who investigated the charges against Obeginski, alleging that the officer committed perjury while testifying in Obeginski's criminal trial. The trial court granted the writ and Obeginski appeared at a probable cause hearing on his application for an arrest warrant, which the trial court subsequently denied. For the reasons that follow, we affirm.

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(7/1/16)

Obeginski filed his warrant application in superior court, noting that under OCGA § 17-4-40 (c), a warrant against a peace officer could not be issued by a magistrate. He contended that new evidence showed that the lead investigator in his criminal case committed perjury, as defined by OCGA § 16-10-70, when the investigator testified at Obeginski's criminal trial.¹ Specifically, Obeginski averred in an affidavit that the investigator committed perjury when he testified that he left Obeginski's house on the day he was arrested, obtained a search warrant, and returned to the house to execute it, but actually the investigator did not apply for the search warrant until a month later and the warrant was never signed. Obeginski included an excerpt of the investigator's testimony and copies of pages from two different search warrants.

Obeginski was transported from prison to the courthouse for a hearing on his application for an arrest warrant. The trial court quoted the perjury statute, OCGA § 16-10-70 (a), which provides that "a person to whom a lawful oath or affirmation has been administered commits the offense of perjury when, in a judicial proceeding, he

¹Obeginski was convicted of one count of aggravated child molestation and two counts of child molestation in May 2010, and sentenced to serve 25 years without parole, followed by life on probation. This court affirmed the judgment of conviction on direct appeal in January 2012. *Obeginski v. State*, 313 Ga. App. 567 (722 SE2d 162) (2012).

knowingly and willfully makes a false statement material to the issue or point in question.” Obeginski explained that the investigator’s false statements were that Obeginski had empty bottles of vodka in his bedroom and car; that the investigator left the residence and obtained a signed search warrant before returning to search Obeginski’s car and closet; and that he took pictures of Obeginski’s trunk that evening but the pictures clearly were taken during daylight hours.

The State called the investigator to testify at the warrant hearing, and the investigator explained that he had sought two arrest warrants, one on the day of arrest to search Obeginski’s residence and car, and another a month later to swab Obeginski’s cheek for DNA material. Reviewing the paperwork for both warrants, the investigator testified that he took the first affidavit and warrant to the magistrate judge’s house to be reviewed and thought the magistrate had signed it, but after Obeginski filed the warrant application, the officer reviewed the file and could not find a signed copy of the warrant. He also testified that a different magistrate signed a second warrant a month later that allowed the investigator to swab the inside of Obeginski’s mouth for a DNA exemplar. He further testified that the victim’s shorts and underwear, which he seized, had been in plain view when he came to the scene initially.

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A magistrate judge testified that he recalled the investigator coming to his house with an affidavit and search warrant involving Obeginski, and identified his signature on the investigator's affidavit. His procedure was to read the affidavit to identify specific things, such as the location to be searched and items to be found, then have the officer sign the affidavit, then sign the warrant itself, but in this case, while he intended to sign the search warrant, he mistakenly failed to do so. The court admitted over objection certified copies of the two search warrants, dated a month apart.

At the end of the hearing, the trial court reviewed the elements of perjury and found that the investigator's statements met the first two of four, because they were made under lawful oath during a judicial proceeding. As to the requirements that the person knowingly and wilfully make a false statement and that the false statement be material to the issue in question, the court noted that search warrants were irrelevant to jury trial issues; if material evidence were obtained during the execution of an illegal warrant, then the proper procedure would be to file a motion to suppress the evidence.

Further, the relevant evidence seized from Obeginski's residence – the victim's shorts and underwear – had been in plain view, the trial court found, so no search

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warrant had been necessary to gather them. Pictures of vodka bottles were irrelevant, because multiple witnesses testified that Obeginski was highly intoxicated when arrested, and as Obeginski himself noted, vodka bottle evidence was irrelevant to the issue of child molestation. Finally, the trial court noted that the magistrate testified that, having signed the investigator's affidavit, he intended to then sign the search warrant, and the investigator testified that he thought the warrant had been signed. The trial court denied the application for an arrest warrant, concluding that even if the initial search warrant was never signed, there was no evidence that the investigator deliberately lied about it at trial, and no evidence that any false testimony he gave was about an issue material to the child molestation charges for which Obeginski had been on trial.

We have previously exercised jurisdiction over a case involving the denial of an arrest warrant. See *McIntosh v. Gordy*, 308 Ga. App. 405 (707 SE2d 609) (2011). In this case, as our Supreme Court noted upon returning it to this court after we transferred it there, the appeal is solely from the denial of the arrest warrant, as the trial court granted the writ of habeas corpus ad testificandum and Obeginski testified at the hearing on his application.

Obeginski enumerates eleven errors on appeal, giving cursory citations to legal authority for each one, such as, for example, “United States 5th and 14th Amendment to the Constitution’s Due Process Clause” and “the 4th Amendment to the United States Constitution, illegal search and seizure.” However, the purpose of the arrest warrant hearing was to provide Obeginski an occasion for him to present evidence that, if true, would establish probable cause that the investigator had committed a crime. The duty of the court in that hearing was “simply to determine whether there [was] sufficient reason to suspect the guilt of the accused and to require him to appear and answer before the court competent to try him. Whenever such probable cause exists, it is the duty of the court to commit.” OCGA § 17-7-23 (a). Any rights applicable before or during a probable cause hearing adhere to the accused, not the accuser, and in any case, “an accused has no constitutional right to a preliminary hearing.” *Hunt v. Hopper*, 232 Ga. 53, 54 (2) (205 SE2d 303) (1974). Obeginski, as the accuser, thus had no constitutional or statutory rights about which to argue on appeal.

Additionally, issues not raised or ruled on below are waived on appeal, such as Obeginski’s contention that he received no advance notice of his hearing date, and his ineffective assistance of counsel claims, which were not only not raised but are

completely irrelevant to his warrant application. See *Brockman v. State*, 292 Ga. 707, 731 (18) (739 SE2d 332) (2013). Still other “enumerations” are simply factual statements or phrases and the citations to authority are general references to constitutional amendments.

The issue was whether the evidence produced at the hearing could possibly have established the elements of perjury, as set forth in OCGA § 16-10-70 (a). It did not. Even assuming that the investigator lied about getting the warrant signed, about where he found vodka bottles, and about when his crime scene photographs were taken, those facts were irrelevant to any material issues in Obeginski’s criminal trial for aggravated child molestation and child molestation, as is evident from a review of the facts recited in this court’s denial of Obeginski’s direct appeal. See *Obeginski*, 313 Ga. App. at 569 (1).

We have reviewed each of Obeginski’s 11 enumerations of error, and find no merit to any of them.

We do not authorize publication of this opinion because it does not announce a new rule or policy, or involve interpretation of law that is not already precedent. See Court of Appeals Rule 33 (b).

Judgment affirmed. Boggs and Rickman, JJ., concur.