

MURDER

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being under the influence of drugs while making his statements to police makes a key piece of evidence for the state unreliable.

Judge Shepherd Howell said in court that he will allow prosecutors to admit the statements made by Thomas.

"It affects the credibility, not the admissibility," Howell said.

He said a jury can decide if the statements are inconsistent or erroneous.

District Attorney Joe Campbell also argued to exclude evidence from the upcoming trial.

He argued that the criminal history of Kittle and his possible involvement in drugs should not be mentioned during trial.

Defense attorney Don Evans, representing Harkins, argued that possible involvement in drug sales would associate Kittle with violence. He said that information could make a justifiable homicide defense relevant and argued that the background and personal history of the victim is important.

In another strange twist, Campbell also argued to keep information about possible tattoos and scars on Kittle from coming out during trial.

Evans said that the tattoos would "say something about the victim and his state of mind."

Howell said that he could not accept the defense arguments and information about Kittle's tattoos would not be admissible.

Campbell also attempted to keep the toxicology reports of Kittle from coming out during trial. Those reports could show the level of drugs or toxins in Kittle's system prior to his death.

Howell said evidence of the victim's possible intoxication will be admissible and that the defense can introduce such evidence.

He also said evidence of arrests and convictions of the victim for drug violations would not be admissible and that the character of the victim should not be admitted.

Campbell called the attempts to include such evidence as "character assassination" and an attempt by the defense to denigrate the victim for a possible justification defense.

The decisions by Howell were his "inclinations" based on the facts he had considered during the hearing. He said that as evidence is presented, things could change.

On Aug. 10, 1999, Kittle was found beaten and unconscious in Lake Allatoona and according to the GBI, an altercation had occurred between Kittle and the two suspects after he approached them and requested that they turn down their radio.

The official cause of Kittle's death was homicide drowning due to a blunt force injury to the head. Both Heldt and Harkins have pleaded not guilty to the charges and could face a jury trial in Bartow County in February.

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Defense attorney's for the two suspects argued during a motion hearing on February 1, 2000 to keep out statements Thomas made about the murder because of apparent inconsistencies.

However, Bartow County Superior Court Judge Shepherd Howell said in court that he will allow prosecutors to admit state-

ments made by Thomas. He said a jury could decide if the statements are erroneous.

Pending any unforeseen delays, the trial of Harkins and Heldt will begin this week in Howell's courtroom at the Frank Moore Administrative and Judicial Center in Cartersville.