

SUPREME COURT OF GEORGIA

Strozier v. State, 277 Ga. 78

586 S.E.2d 309 (2003) · No. S03A1042 · Decided September 15, 2003

SUMMARY

The Supreme Court of Georgia affirmed Bobby Strozier’s convictions for felony murder, aggravated assault, and firearm-possession offenses arising from a crime spree involving two locations. The court rejected challenges concerning the appointment of the trial judge, sufficiency of the evidence, indictment variance, severance, jury impartiality, and ineffective assistance of counsel.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	September 15, 2003
DOCKET	S03A1042
DISPOSITION	affirmed
PROCEDURAL POSTURE	Strozier appealed his convictions and sentences following a jury trial, challenging the authority of the trial judge, denial of severance motions, juror-related rulings, sufficiency of the evidence, indictment defects, and ineffective assistance of counsel.
STANDARD OF REVIEW	Claims concerning preservation of objections and indictment defects were reviewed under Georgia preservation rules; denial of severance motions and refusal to disqualify the jury panel were reviewed for abuse of discretion; sufficiency of the evidence was reviewed under the rational-trier-of-fact standard; and ineffective assistance was reviewed under Strickland's deficient-performance and prejudice requirements.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Bobby Strozier v. The State

TOPICS

- criminal procedure
- appellate procedure
- ineffective assistance
- jury selection
- evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the convictions were void because the order appointing the senior judge who presided over the trial was insufficient under OCGA § 15-1-9.2(b).
2. Whether the evidence was insufficient to support Strozier's felony-murder conviction because he was merely present during the aggravated assault on Mitchell.
3. Whether the indictment's misidentification of Derek Jones as Derek John required a directed verdict or otherwise invalidated the aggravated-assault conviction.
4. Whether the evidence was sufficient to support all convictions.
5. Whether the trial court abused its discretion by refusing to sever the offenses or Strozier's trial from Hubbard's.
6. Whether possible exposure to Strozier in jail clothing required a new jury panel.
7. Whether the trial court abused its discretion by failing to conduct a separate hearing regarding a potential juror's alleged statement that someone would go to jail.
8. Whether trial counsel was ineffective for failing to object to the appointment of the trial judge.

HOLDINGS

1. A challenge to the sufficiency of the order appointing the senior judge was untimely because it was first raised in the motion for new trial and therefore presented nothing for review.
2. The evidence was sufficient to support Strozier's felony-murder conviction because his active participation in the aggravated assault, including holding Mitchell at gunpoint and threatening her, went beyond mere presence.
3. Strozier failed to preserve his challenge to the indictment's identification of the victim because he did not raise it by demurrer before pleading to the merits or by motion in arrest of judgment after conviction; in any event, the name variance was not fatal because both names referred to the same person.
4. The evidence was sufficient to enable a rational trier of fact to find Strozier guilty beyond a reasonable doubt of all offenses for which he was convicted.
5. The trial court did not abuse its discretion by refusing to sever the offenses arising from the apartment and those arising from the crack house because they were part of a continuing course of conduct and a single crime spree, and the jury was able to distinguish the evidence and apply the law to each offense.
6. The trial court did not abuse its discretion by denying severance of Strozier's trial from Hubbard's because the defendants acted in concert and the fact that the evidence was stronger against one defendant did not require severance.
7. The possible inclusion of jurors who may have seen Strozier in jail clothing did not require a new jury panel because the jurors denied seeing him or any person in bright clothing and stated they could be fair; even a disqualified juror would require a challenge for cause rather than dismissal of the entire panel.

8. The trial court did not abuse its discretion by refusing to disqualify the entire jury panel or conduct a separate panel examination based on a bystander's report that a potential juror said someone would go to jail.
9. Strozier failed to establish ineffective assistance because he did not show prejudice from counsel's failure to object to the appointment of the trial judge.

KEY QUOTATIONS

“While mere presence at the scene of a crime is not sufficient evidence to convict one of being a party to a crime, criminal intent may be inferred from presence, companionship, and conduct before, during and after the offense.” (586 S.E.2d 311)

“A variance between the victim's name as alleged in the indictment and as proven at trial is not fatal if the two names in fact refer to the same individual, such as where a mere misnomer is involved.” (586 S.E.2d 312)

“However, the fact that the evidence as to one of two co-defendants is stronger does not demand a finding that the denial of a severance motion is an abuse of discretion, where there is evidence showing that the defendants acted in concert.” (586 S.E.2d 313)

FACTUAL BACKGROUND

Strozier, Darrick Hubbard, and another armed man entered Derek Jones and Melody Bonner's apartment, held occupants at gunpoint, assaulted Jones, and shot at him as he escaped. Later, at a crack house, Hubbard beat Katrina Gemes while Strozier guarded her with a cocked firearm. Strozier then held Dianne Mitchell at gunpoint and threatened her, after which Hubbard shot Mitchell; she later died from the wound.

PROCEDURAL HISTORY

Strozier and co-defendant Darrick Hubbard were indicted in 1999 on multiple murder, aggravated-assault, armed-robbery, and firearm charges. Following trial, Strozier was convicted of felony murder, aggravated assaults, and two firearm-possession offenses; he was acquitted of malice murder and one aggravated-assault count. The trial court later granted a partial new trial on three aggravated-assault counts because of a defective jury instruction, placed those counts on the dead docket, and modified the sentence. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Hurst v. State, 260 Ga. App. 708(2), 580 S.E.2d 666 (2003)
- Belsar v. State, 276 Ga. 261, 262(1), 577 S.E.2d 569 (2003)
- Peppers v. State, 242 Ga. App. 416(1), 530 S.E.2d 34 (2000)
- Mooney v. State, 250 Ga. App. 13, 14, 550 S.E.2d 421 (2001)

- Rucker v. State, 114 Ga. 13, 14(1), 39 S.E. 902 (1901)
- Parks v. State, 246 Ga. App. 888, 889, 543 S.E.2d 39 (2000)
- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Hubbard v. State, 275 Ga. 610, 611(2), 571 S.E.2d 351 (2002)
- Bland v. State, 264 Ga. 610(1), 449 S.E.2d 116 (1994)
- Smith v. State, 186 Ga. App. 303, 307(2), 367 S.E.2d 573 (1988)
- Head v. State, 256 Ga. App. 624, 627(1)(d), 569 S.E.2d 548 (2002)
- Taylor v. State, 121 Ga. 348, 49 S.E. 303 (1904)
- Fields v. State, 190 Ga. 642(2), 10 S.E.2d 33 (1940)
- Coates v. State, 165 Ga. 191, 140 S.E. 287 (1927)
- Newby v. State, 161 Ga. App. 805(4), 288 S.E.2d 889 (1982)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Doctor v. State, 275 Ga. 612(5), 571 S.E.2d 347 (2002)