

SUPREME COURT OF GEORGIA

Perkinson v. State, 273 Ga. 491

542 S.E.2d 92 (2001) · No. S00A1710 · Decided February 5, 2001

SUMMARY

The Supreme Court of Georgia held that double jeopardy barred DeKalb County from prosecuting Eric Perkinson for kidnapping with bodily injury and armed robbery after Bartow County proceedings arising from the same criminal episode. The majority concluded that the underlying felonies were lesser-included offenses of felony murder and that the counties were not separate sovereigns. A partial dissent maintained that the felony murder verdicts did not result in valid convictions and therefore could not bar the armed robbery prosecution.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; Carley, Justice; Hunstein, Justice
JURISDICTION	Georgia
DECIDED	February 5, 2001
DOCKET	S00A1710
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a plea in bar asserting that a pending DeKalb County prosecution was barred by double jeopardy.
STANDARD OF REVIEW	De novo review of the legal question whether successive prosecution is barred by double jeopardy.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Georgia.
PARTIES	Eric Perkinson v. State of Georgia

TOPICS

- double jeopardy
- criminal procedure
- fifth amendment
- appellate procedure
- federalism

PRACTICE AREAS

- Criminal law
- Constitutional law
- Appellate procedure

QUESTIONS PRESENTED

1. Whether double jeopardy barred DeKalb County from prosecuting kidnapping with bodily injury and armed robbery after Bartow County convictions for felony murder incorporating those offenses as predicate felonies.
2. Whether double jeopardy barred prosecution for kidnapping with bodily injury after Bartow County convictions for false imprisonment of the victims, a lesser-included offense.
3. Whether the fact that the Bartow County felony-murder convictions were vacated by operation of law permitted a later prosecution for the underlying felonies in another county.

HOLDINGS

1. Double jeopardy bars DeKalb County from prosecuting Perkinson for kidnapping with bodily injury and armed robbery when those offenses were the predicate felonies incorporated into the Bartow County felony-murder convictions.
2. Double jeopardy bars the DeKalb County prosecution for kidnapping with bodily injury because false imprisonment is a lesser-included offense of kidnapping with bodily injury and Perkinson had already been convicted of false imprisonment of both victims.

KEY QUOTATIONS

“A prosecution for a lesser-included offense after a conviction for the greater offense in a different county violates OCGA § 16-1-8(a), Art. I, Sec. I, Par. XVIII of the 1983 Georgia Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution.” (494)

“Whatever the sequence may be, the Fifth Amendment forbids successive prosecution and cumulative punishment for a greater and lesser included offense.” (495-496)

“The State cannot prosecute Perkinson for kidnapping with bodily injury and armed robbery in DeKalb County after his convictions for felony murder incorporating those predicate offenses in Bartow County.” (496)

FACTUAL BACKGROUND

On June 6, 1998, Perkinson and accomplices abducted Dakarai Sloley and Louis Nava in DeKalb County, took cash from them, and forced them into vehicles. The group drove to Bartow County, where Perkinson shot Nava several times, killing him, and shot at Sloley while Sloley attempted to escape, breaking his arm. Perkinson was convicted in Bartow County of malice murder and related offenses, including false imprisonment, and the State later sought to prosecute him in DeKalb County for the underlying kidnappings with bodily injury and armed robberies.

PROCEDURAL HISTORY

Perkinson was convicted in Bartow County of malice murder and numerous other offenses arising from a multi-county criminal episode. The Bartow County court vacated the alternative felony-murder convictions and imposed a death sentence for malice murder plus consecutive prison sentences for the remaining convictions.

DeKalb County later indicted Perkinson for kidnapping with bodily injury, armed robbery, and firearm offenses. The DeKalb County trial court denied the plea in bar as to the kidnapping and armed-robbery charges but granted it as to the firearm charges. Perkinson appealed the denial, and the Supreme Court of Georgia reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The DeKalb County prosecution for kidnapping with bodily injury and armed robbery is barred by double jeopardy. The opinion does not provide additional remand instructions.

CASES CITED

- Torres v. State, 270 Ga. 79, 508 S.E.2d 171 (1998)
- Patterson v. State, 248 Ga. 875, 287 S.E.2d 7 (1982)
- Haynes v. State, 249 Ga. 119, 288 S.E.2d 185 (1982)
- Malcolm v. State, 263 Ga. 369, 434 S.E.2d 479 (1993)
- Brown v. Ohio, 432 U.S. 161 (1977)
- United States v. Dixon, 509 U.S. 688 (1993)
- Blockburger v. United States, 284 U.S. 299 (1932)
- Harris v. Oklahoma, 433 U.S. 682 (1977)
- Atkins v. Hopper, 234 Ga. 330, 216 S.E.2d 89 (1975)
- Woods v. State, 233 Ga. 495, 212 S.E.2d 322 (1975)
- Stephens v. Zant, 631 F.2d 397 (5th Cir. 1980), rev'd on other grounds, 462 U.S. 862 (1983)
- Heath v. Alabama, 474 U.S. 82 (1985)
- Potts v. State, 261 Ga. 716, 410 S.E.2d 89 (1991)
- State v. Sallie, 206 Ga. App. 732, 427 S.E.2d 11 (1992)
- Sallie v. State, 216 Ga. App. 502, 455 S.E.2d 315 (1995)
- Stovall v. State, 216 Ga. App. 138, 453 S.E.2d 110 (1995)
- Lee v. State, 270 Ga. 798, 514 S.E.2d 1 (1999)
- Keener v. State, 238 Ga. 7, 230 S.E.2d 846 (1976)
- State v. LeMay, 186 Ga. App. 146, 367 S.E.2d 61 (1988)
- Lowe v. State, 240 Ga. 767, 242 S.E.2d 582 (1978)
- United States v. Jorn, 400 U.S. 470 (1971)
- Laster v. State, 268 Ga. 172, 486 S.E.2d 153 (1997)
- State v. LeMay, 186 Ga. App. 146, 367 S.E.2d 61 (1988)
- Rower v. State, 267 Ga. 46, 472 S.E.2d 297 (1996)
- Bellamy v. State, 272 Ga. 157, 527 S.E.2d 867 (2000)

- Blackstock v. State, 270 Ga. 117, 506 S.E.2d 130 (1998)
- McCrary v. State, 254 Ga. 382, 329 S.E.2d 473 (1985)
- Garrard v. State, 242 Ga. App. 189, 528 S.E.2d 273 (2000)
- Griffin v. State, 266 Ga. 115, 464 S.E.2d 371 (1995)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/georgia-supreme-court-of-georgia/2001/perkinson-v-state-273-ga-491-6udyettc>