

INDIANA SUPREME COURT

Reginald Harris v. State of Indiana

76 N.E.3d 137 (Ind. 2017) · No. No. 45S03-1703-CR-172 · Decided June 22, 2017

SUMMARY

The Indiana Supreme Court affirmed Reginald Harris’s convictions for battery against a public safety official and resisting law enforcement. The court held that the trial court did not abuse its discretion by admitting a jointly tried codefendant’s gun, and that Harris waived his claim that the gun was irrelevant and prejudicial by failing to seek severance or a limiting instruction.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Chief Justice Loretta H. Rush; Justice Steven H. David; Justice Mark S. Massa; Justice Christopher M. Goff? No
JURISDICTION	Indiana
DECIDED	June 22, 2017
DOCKET	No. 45S03-1703-CR-172
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harris appealed his convictions for Level 5 felony battery against a public safety official and Level 6 felony resisting law enforcement, challenging admission of a jointly tried codefendant's gun. The Indiana Court of Appeals affirmed in a split decision. The Indiana Supreme Court granted transfer, vacated the Court of Appeals opinion, and affirmed the convictions.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. Harris's unpreserved fair-trial claim was reviewed under the fundamental-error standard, requiring a showing that a fair trial was impossible.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential
PARTIES	Reginald Harris v. State of Indiana

TOPICS

- evidence
- appellate procedure
- standard of review
- preservation of error
- criminal procedure

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting Snow's gun into evidence at Harris's joint trial.
2. Whether admission of the gun denied Harris a fair trial because the gun was irrelevant to his charges and unfairly prejudicial.
3. Whether the trial court committed fundamental error by failing to give a limiting instruction sua sponte.

HOLDINGS

1. The trial court acted within its discretion in admitting Snow's gun under the Indiana Rules of Evidence; res gestae was not the proper basis for the ruling, but the admission was nevertheless permissible under the evidence rules.
2. Harris waived his fair-trial argument by raising it for the first time at oral argument and by failing to move for a separate trial or request a limiting instruction.
3. The trial court did not commit fundamental error by failing to give a limiting instruction sua sponte.

KEY QUOTATIONS

“Because Harris waived this argument, he can prevail only by meeting the “daunting” fundamental error standard.” (slip op. at 3)

“The trial court has “no affirmative duty to consider giving an admonishment in the absence of a party’s request.”” (slip op. at 4)

FACTUAL BACKGROUND

Harris refused Officer Terry Peck's request to exit Snow's vehicle and fought with Peck when the officer attempted to remove him. Harris pulled Peck into the vehicle and repeatedly struck him before being handcuffed and placed in a patrol car. During Snow's subsequent arrest, a gun she was carrying fell and struck Peck before landing on the ground. Harris and Snow were jointly tried, represented by the same attorney, and the State introduced the gun even though neither defendant was charged with a gun-related offense.

PROCEDURAL HISTORY

Harris and Summer Snow were jointly tried and convicted after the State introduced Snow's gun over objection. The Court of Appeals affirmed Harris's convictions. The Indiana Supreme Court granted transfer under Indiana Appellate Rule 58(A), vacating the Court of Appeals decision, and affirmed the trial court.

DISPOSITION

affirmed

CASES CITED

- Snow v. State, No. 45S03-1703-CR-169, slip op. at 2–6 (June 22, 2017)
- Zanders v. State, 73 N.E.3d 178, 181 (Ind. 2017)
- Gibson v. State, 51 N.E.3d 204, 212 (Ind. 2016)
- Humphrey v. State, 73 N.E.3d 677, 687 n.2 (Ind. 2017)
- Fredrick v. State, 755 N.E.2d 1078, 1081 (Ind. 2001)
- Sanchez v. State, 675 N.E.2d 306, 308–09 (Ind. 1996)
- Sims v. Pappas, 73 N.E.3d 700, 707 (Ind. 2017)
- Griffith v. State, 59 N.E.3d 947, 956 (Ind. 2016)
- Shoun v. State, 67 N.E.3d 635, 640 (Ind. 2017)
- Knapp v. State, 9 N.E.3d 1274, 1281 (Ind. 2014)
- Washington v. State, 808 N.E.2d 617, 624–25 (Ind. 2004)
- Smith v. State, 721 N.E.2d 213, 216 (Ind. 1999)
- Harris v. State, 66 N.E.3d 628, 629 (Ind. Ct. App. 2016)

OPINION

RUSH, J.

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In the FILED Indiana Supreme Court Jun 22 2017, 1:19 pm CLERK Indiana Supreme Court
_____ Court of Appeals and Tax Court No. 45S03-1703-CR-
172 REGINALD HARRIS, Appellant (Defendant), v. STATE OF INDIANA, Appellee (Plaintiff).
_____ Appeal from the Lake Superior Court Criminal Division
1, No. 45G01-1412-F5-41 The Honorable Salvador Vasquez, Judge
_____ On Petition to Transfer from the Indiana Court of
Appeals, No. 45A03-1605-CR-1168 _____ June 22, 2017
Rush, Chief Justice.

Reginald Harris and his girlfriend, Summer Snow, separately appeal their convictions for battery against a public safety official and resisting law enforcement. They each challenge the admission of Snow’s gun at their joint trial, arguing that it was not relevant and that its unfair prejudice made it inadmissible.

For the reasons given in Snow’s case—issued today as a companion opinion—the trial court was within its discretion to admit the gun. And though the gun was not relevant to Harris’s crimes, he

failed to seek a separate trial or a limiting instruction—thus waiving any argument that the gun’s admission denied him a fair trial.

We affirm his convictions. Facts and Procedural History After fighting with police officer Terry Peck, Reginald Harris and Summer Snow were convicted of battery against a public safety official and resisting law enforcement. Since we give the full facts in today’s companion opinion, *Snow v. State*, No. 45S03-1703-CR-169, ___ N.E.3d ___, slip op. at 2–4 (June 22, 2017), we summarize them here.

Early one November morning, Summer Snow was fighting with her boyfriend, Reginald Harris. After she kicked him out of her house, he went to the driveway and sat in her car. Snow tried to kick him out of her car as well, calling the police when he refused to leave. Officer Terry Peck responded, and asked Harris to step out of the vehicle. Harris refused, so Peck tried to remove him—resulting in a scuffle where Harris pulled Peck into the car and hit him repeatedly.

Officer Peck eventually handcuffed Harris and locked him in the back of a patrol car. After fighting with Snow, Officer Peck arrested her as well. As he did so, a gun she was carrying fell, hit his knee and boot, and landed on the ground.

The State charged Harris with Level 5 felony battery against a public safety official and Level 6 felony resisting law enforcement.¹ Neither Harris nor Snow was charged with a gun- related offense. At the ensuing joint jury trial, the same attorney represented both Snow and Harris.

The State introduced the gun into evidence over the defendants’ objection, and the jury found Harris guilty as charged. Harris and Snow separately appealed, challenging the gun’s admission at trial. The Court of Appeals affirmed Harris’s convictions in a split decision. *Harris v. State*, 66 N.E.3d 628, 629 (Ind. Ct. App. 2016). Harris petitioned for transfer, arguing that the Court of Appeals incorrectly 1 The State charged Snow with two counts of Level 5 felony battery against a public safety official, and one count each of Level 6 felony resisting law enforcement and Class B misdemeanor disorderly conduct.

She was convicted of one count of Level 5 battery against a public safety official and Level 6 felony re- sisting law enforcement. We affirm her convictions in today’s companion opinion, *Snow v. State*, No. 45S03-1703-CR-169, ___ N.E.3d ___ (June 22, 2017). 2 applied the defunct res gestae standard.

The State did not respond. We granted transfer, thereby vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A). Standard of Review The trial court admitted Snow’s gun over Harris and Snow’s objection; we review this evidentiary ruling for an abuse of discretion. *Zanders v. State*, 73 N.E.3d 178, 181 (Ind. 2017). Harris also alleged at oral argument that the gun’s admission denied him a fair trial.

Because he waived this claim, we review it for fundamental error—an “extremely narrow exception to the waiver rule” where Harris bears the heavy burden of showing that a fair trial was impossible. *Gibson v. State*, 51 N.E.3d 204, 212 (Ind. 2016). Discussion and Decision As we hold in our companion *Snow* opinion, *res gestae* is not proper grounds for the admission of evidence.

Slip op. at 5–6. Instead, we look to our Rules of Evidence, and under those rules it was within the trial court’s discretion to admit *Snow*’s gun into evidence. *Id.* So we reject Harris’s argument that admitting the gun was error. Harris also claimed for the first time at oral argument that because the gun was not relevant to his charges, its admission prejudiced his right to a fair trial.

Harris is correct that the gun has no relevance to the charges: he was sitting handcuffed in the back seat of a patrol car before the gun made its way onto the scene. But Harris has waived his fair trial argument for two reasons.

First, issues are waived when raised for the first time at oral argument. *Humphrey v. State*, 73 N.E.3d 677, 687 n.2 (Ind. 2017). And second, Harris did not take any steps in the trial court to distance himself from *Snow*’s case or her handgun. He never moved for a separate trial from *Snow*’s, “thereby waiving his right to a separate trial.” *Fredrick v. State*, 755 N.E.2d 1078, 1081 (Ind.

2001). He also never requested a limiting instruction telling the jury to consider *Snow*’s gun only for her charges. See *Sanchez v. State*, 675 N.E.2d 306, 308–09 (Ind. 1996) (finding a claim waived when the defendant neither tendered a limiting instruction nor objected to the trial court’s final instructions); *Sims v. Pappas*, 73 N.E.3d 700, 707 (Ind. 2017) (“Importantly, the party seeking to limit the evidence has the duty to request the instruction.”).

3 Because Harris waived this argument, he can prevail only by meeting the “daunting” fundamental error standard. *Griffith v. State*, 59 N.E.3d 947, 956 (Ind. 2016). This requires him to show that the trial court should have raised the issue *sua sponte* due to a blatant violation of basic and elementary principles, undeniable harm or potential for harm, and prejudice that makes a fair trial impossible.

Shoun v. State, 67 N.E.3d 635, 640 (Ind. 2017); *Knapp v. State*, 9 N.E.3d 1274, 1281 (Ind. 2014). We cannot find fundamental error—or any error—in the trial court’s decision not to give a limiting instruction *sua sponte*.

The trial court has “no affirmative duty to consider giving an admonishment in the absence of a party’s request.” *Washington v. State*, 808 N.E.2d 617, 624–25 (Ind. 2004) (citing *Smith v. State*, 721 N.E.2d 213, 216 (Ind. 1999)); see also *Sims*, 73 N.E.3d at 707. And the trial court, at both the beginning and end of trial, instructed the jury as follows: Although the defendants are being tried jointly, you must give separate consideration to each defendant.

In doing so, you must analyze what the evidence in the case shows with respect to each defendant. Each defendant is entitled to have their case decided on the evidence and the law applicable to them. The jury, then, was appropriately instructed—especially since Harris did not request a limiting instruction. Conclusion As we hold in *Snow*, the trial court was within its discretion to admit the gun.

Harris cannot show any error—much less fundamental error—to overcome the waiver of his unfair trial argument. We thus affirm the trial court. David, Massa, and Slaughter, JJ., concur. 4