

SUPREME COURT OF INDIANA

Vestal v. State

773 N.E.2d 805 (Ind. 2002) · No. No. 11S04-0208-CR-433 · Decided August 19, 2002

SUMMARY

The Indiana Supreme Court granted transfer and affirmed Richard Vestal’s convictions for burglary and theft. Applying the Indiana Constitution’s actual-evidence double-jeopardy test, the court held that there was no reasonable possibility the jury used the same evidentiary facts to establish both offenses. The court vacated the Court of Appeals’ double-jeopardy discussion while summarily affirming its resolution of the remaining issues and remand.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Dickson, Justice; Shepard, Chief Justice; Rucker, Justice; Sullivan, Justice; Boehm, Justice
JURISDICTION	Indiana
DECIDED	August 19, 2002
DOCKET	No. 11S04-0208-CR-433
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition to transfer from the Indiana Court of Appeals following the defendant's convictions for Class C felony burglary and Class D felony theft.
STANDARD OF REVIEW	De novo review of the relevant charging information, evidence, and jury instructions for purposes of the actual-evidence double-jeopardy analysis.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential.
PARTIES	Richard Vestal v. State of Indiana

TOPICS

- double jeopardy
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal law
- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether Vestal's convictions for burglary and theft violated the Double Jeopardy Clause of Article 1, Section 14 of the Indiana Constitution under the actual-evidence test.
2. Whether the burglary jury instruction required the jury to find the completed theft as an element of burglary, thereby creating a reasonable possibility that the jury used the same evidentiary facts to convict on both offenses.

HOLDINGS

1. The convictions did not violate the Indiana Double Jeopardy Clause because there was no reasonable possibility that the jury used the same evidentiary facts to establish the essential elements of both burglary and theft.
2. The language following 'to-wit' in the burglary instruction described the theft intended and did not require the jury to find that the completed theft had occurred as an element of burglary.

KEY QUOTATIONS

“In Richardson, we explained that two offenses are the “same offense” in violation of the Indiana Double Jeopardy Clause if, “with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.” (773 N.E.2d at 806)

“We find that there is no reasonable possibility that the jury used the same evidentiary facts to establish the essential elements of both burglary and theft.” (773 N.E.2d at 807)

FACTUAL BACKGROUND

While drinking with his son in Terre Haute, Indiana, Vestal asked whether his son wanted to make money and then drove him to a liquor store in Brazil, Indiana. Vestal broke a window, pried open the store door with a crowbar, and entered with his son. They removed liquor, beer, cigarettes, and approximately \$100 in cash, placed the property in Vestal's truck, and returned to Terre Haute.

PROCEDURAL HISTORY

Vestal was convicted of burglary and theft. The Indiana Court of Appeals rejected his Indiana constitutional double-jeopardy claim but remanded for an indigency hearing concerning responsibility for payment of costs. The Indiana Supreme Court granted transfer, vacated the Court of Appeals' discussion of double jeopardy, summarily affirmed its resolution of the other issues and its remand, and affirmed the convictions.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Court of Appeals' remand to the trial court for an indigency hearing concerning responsibility for payment of costs was summarily affirmed.

CASES CITED

- Vestal v. State, 745 N.E.2d 249 (Ind. Ct. App. 2001)
- Richardson v. State, 717 N.E.2d 32 (Ind. 1999)
- Marcum v. State, 725 N.E.2d 852 (Ind. 2000)
- Guyton v. State, 771 N.E.2d 1141 (Ind. 2002)

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