

SUPREME COURT OF GEORGIA

Hooper v. State, 284 Ga. 824

672 S.E.2d 638 (2009) · No. No. S08A1654 · Decided January 26, 2009

SUMMARY

The Supreme Court of Georgia affirmed Kevin Lamar Hooper's convictions for malice murder and related offenses. The court held that a witness's prior nolo contendere plea to misdemeanor shoplifting could not be used for impeachment and that Hooper was not entitled to a jury instruction on involuntary manslaughter because he claimed self-defense.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Justice Melton; All other Justices
JURISDICTION	Georgia
DECIDED	January 26, 2009
DOCKET	No. S08A1654
DISPOSITION	affirmed
PROCEDURAL POSTURE	Following a jury trial and convictions for malice murder and related offenses, Hooper appealed the denial of his motion for new trial, challenging the exclusion of impeachment evidence and the refusal to give an involuntary-manslaughter instruction.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. The challenged jury-instruction and evidentiary rulings were reviewed for legal error.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Georgia.
PARTIES	Kevin Lamar Hooper v. The State

TOPICS

- criminal procedure
- self defense
- impeachment
- appellate procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court erred by refusing to allow Hooper to impeach the State's witness with the witness's prior nolo contendere plea to misdemeanor shoplifting.
2. Whether the trial court erred by refusing to instruct the jury on involuntary manslaughter where Hooper claimed that he used a knife in self-defense.

HOLDINGS

1. A witness's prior nolo contendere plea may not be used for impeachment because Georgia law prohibits using such a plea against the defendant in any other court or proceeding for any purpose.
2. A defendant who seeks to justify a homicide under the self-defense statute is not entitled to an additional instruction on involuntary manslaughter in the commission of a lawful act, regardless of the instrument used to cause death.

KEY QUOTATIONS

"a defendant who seeks to justify homicide under the "self-defense" statute ... is not entitled to an additional instruction on involuntary manslaughter in the course of a lawful act ... whatever the implement of death." (at 639-640)

"For if he is justified in killing under OCGA § 16-3-21 ... he is guilty of no crime at all. If he is not so justified, the homicide does not fall within the "lawful act" predicate of OCGA § 16-5-3(b) ... for the jury, in rejecting his claim of justification, has of necessity determined thereby that the act is not lawful." (at 640)

FACTUAL BACKGROUND

After drinking with Kris Dowdy and Michael Hill, Hooper was taken to Hill's apartment because he was drunk and belligerent. Hill heard Dowdy yell that he had been stabbed and saw Hooper flee; Dowdy later died from a stab wound. Hooper testified that Dowdy and Hill attacked him and that he picked up a knife and stabbed Dowdy in self-defense.

PROCEDURAL HISTORY

Hooper was indicted on May 7, 2004, tried before a jury on November 8-9, 2004, and convicted of malice murder, felony murder, voluntary manslaughter, two counts of aggravated assault, and possession of a knife during the commission of a crime. He was sentenced to life imprisonment for malice murder and five consecutive years for the knife-possession offense; the felony-murder conviction was vacated by operation of law, and the remaining convictions were merged for sentencing. The trial court denied his amended motion for new trial on April 24, 2008, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Hudson v. State, 284 Ga. 595(1), 669 S.E.2d 94 (2008)
- Pitmon v. State, 265 Ga. App. 655, 659(2), 595 S.E.2d 360 (2004)
- Crawford v. State, 245 Ga. 89(3), 263 S.E.2d 131 (1980)
- Saylors v. State, 251 Ga. 735, 737(3), 309 S.E.2d 796 (1983)
- Malcolm v. State, 263 Ga. 369(4), 434 S.E.2d 479 (1993)

OPINION

MELTON, J.

672 S.E.2d 638 (2009) HOOPER v. The STATE. No. S08A1654. Supreme Court of Georgia. January 26, 2009. Jason W. Swindle, Carrollton, for Appellant. Thurbert E. Baker, Atty. Gen., Reggie Allen Lampkin, Asst. Atty. Gen., Harold Winfred Goldin, Jr., Asst. Dist. Atty., Leigh Ellen Patterson, Dist. Atty., for Appellee. MELTON, Justice. Following a jury trial, Kevin Lamar Hooper was found guilty of malice murder, felony murder, voluntary manslaughter, two counts of aggravated assault, and possession of a knife during the commission of a crime.[1] On *639 appeal, Hooper contends that the trial court erred by not allowing him to impeach a State's witness through the use of the witness's prior nolo contendere plea to a shoplifting charge, and by refusing to charge the jury on the lesser included offense of involuntary manslaughter.

For the reasons that follow, we affirm. Viewed in the light most favorable to the verdict, the evidence reveals that, on February 13, 2004, Kevin Hooper went drinking with Kris Dowdy and Michael Hill at a local bar. Hooper tried to start fights with bar patrons, causing all three men to be kicked out of the bar. Dowdy and Hill talked police out of taking Hooper to jail, and instead took Hooper to Hill's apartment, where they left him to continue their evening.

When they returned to the apartment, they found Hooper drunk and belligerent. While in the apartment, Hill heard Dowdy yell from behind him that he had been stabbed. Hill turned and saw Hooper run out of the apartment. He gave chase, found Hooper, and beat him up for stabbing his friend. Hill then returned to the apartment to find Dowdy fatally wounded from the stab wound inflicted by Hooper.

At trial, Hooper testified that he acted in self-defense. He said that Dowdy and Hill attacked him, and he picked up a knife to defend himself and stabbed Dowdy in the chest. Despite Hooper's claim of self-defense, however, the evidence was sufficient to allow a rational trier of fact to find him guilty of all of the crimes for which he was convicted beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); see also Hudson v. State, 284 Ga. 595(1), 669 S.E.2d 94 (2008). 1. Hooper argues that the trial court erred in not allowing

him to impeach Hill's credibility as a witness at trial based on Hill's previous entry of a nolo contendere plea to misdemeanor shoplifting.

However, "[e]xcept as otherwise provided by law, a plea of nolo contendere shall not be used against the defendant in any other court or proceedings as an admission of guilt or otherwise or for any purpose." (Emphasis supplied.) OCGA § 17-7-95(c). "When the legislature prohibited the use of such a plea against the defendant in any other court for any purpose, it did not carve out an exception for impeachment."

(Citation and punctuation omitted; emphasis in original.) *Pitmon v. State*, 265 Ga.App. 655, 659(2), 595 S.E.2d 360 (2004). Accordingly, we find no error in the trial court's refusal to allow the use of Hill's nolo contendere plea for impeachment purposes. *Id.* 2. Hooper contends that the trial court erred by refusing to charge the jury on the lesser included offense of involuntary manslaughter.

Specifically, Hooper claims that, because he used a knife rather than a gun to allegedly defend himself from an attack by Hill and Dowdy, he should be entitled to a jury instruction on involuntary manslaughter. See OCGA § 16-5-3(b) ("A person commits the offense of involuntary manslaughter in the commission of a lawful act in an unlawful manner when he causes the death of another human being without any intention to do so.").

See also *Crawford v. State*, 245 Ga. 89(3), 263 S.E.2d 131 (1980) (noting a distinction between use of knives and use of a gun in deciding that defendant who claimed to use gun in self-defense was not entitled to jury instruction on involuntary manslaughter).

However, this Court has specifically held that a defendant who seeks to justify homicide under the "self-defense" statute... is not entitled to an additional instruction on involuntary manslaughter in the course of a lawful act... whatever the implement of death.

For if he is justified in killing under OCGA § 16-3-21... he is guilty of no crime at all. If he is not so justified, the homicide does not fall within the "'lawful act'" predicate of OCGA § 16-5-3(b) *640... for the jury, in rejecting his claim of justification, has of necessity determined thereby that the act is not lawful. (Punctuation omitted; emphasis in original.)

Saylors v. State, 251 Ga. 735, 737(3), 309 S.E.2d 796 (1983). This enumeration is therefore without merit. *Id.* Judgment affirmed. All the Justices concur. NOTES [1] On May 7, 2004, Hooper was indicted for malice murder, felony murder, voluntary manslaughter, two counts of aggravated assault, and possession of a knife during the commission of a crime. Following a November 8-9, 2004 jury trial, Hooper was found guilty on all counts.

On November 10, 2004, Hooper was sentenced to life for the malice murder plus five years consecutive for the possession of a knife during the commission of a crime count. The conviction

for felony murder was vacated by operation of law, *Malcolm v. State*, 263 Ga. 369(4), 434 S.E.2d 479 (1993), and the trial court merged the remaining counts into the malice murder count for purposes of sentencing.

Hooper filed a motion for new trial on December 8, 2004, which he amended on May 30, 2007, and October 12, 2007. On April 24, 2008, the motion was denied. Hooper's timely appeal was docketed in this Court on June 17, 2008, and submitted for decision on the briefs.