

SUPREME COURT OF GEORGIA

Denny v. State, 281 Ga. 114

636 S.E.2d 500 (2006) · No. S06A1252 · Decided October 16, 2006

SUMMARY

The Supreme Court of Georgia affirmed Ricky Lee Denny’s convictions for two counts of malice murder, burglary, and possession of a firearm or knife during the commission of a crime. The court rejected challenges concerning severance, venue, jury strikes, mistrial, evidentiary rulings, prosecutorial misconduct, conspiracy instructions, and sufficiency of the evidence.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice; All other Justices
JURISDICTION	Georgia
DECIDED	October 16, 2006
DOCKET	S06A1252
DISPOSITION	affirmed
PROCEDURAL POSTURE	Denny appealed his convictions for two counts of malice murder, burglary, and possession of a firearm or knife during the commission of a crime, challenging several trial rulings and the sufficiency of the evidence.
STANDARD OF REVIEW	Severance decisions are reviewed for abuse of discretion and require a clear showing of prejudice. Change-of-venue decisions are reviewed under whether the venue was inherently prejudicial or the jury-selection process demonstrated actual prejudice. The denial of additional peremptory challenges is reviewed for abuse of discretion. Sufficiency of the evidence is reviewed under whether any rational trier of fact could have found guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Ricky Lee Denny v. The State

TOPICS

- criminal procedure
- appellate procedure
- jury selection
- evidence
- conspiracy

PRACTICE AREAS

criminal law

criminal procedure

appellate law

evidence

QUESTIONS PRESENTED

1. Whether Denny was prejudiced by being tried jointly with his brother and was therefore entitled to severance.
2. Whether the trial court erred in denying Denny's pretrial and mid-trial motions for a change of venue based on publicity.
3. Whether the trial court abused its discretion by denying additional peremptory challenges.
4. Whether the trial court erred in denying a mistrial or conducting further inquiry after a newspaper article about the defendants appeared during trial.
5. Whether evidence of two independent crimes was improperly admitted as bad-character or similar-transaction evidence.
6. Whether the prosecutor committed misconduct by eliciting testimony concerning a possible outstanding warrant in violation of a trial-court ruling.
7. Whether the prosecutor's closing argument contained prejudicial misconduct and misstatements of evidence.
8. Whether the trial court properly instructed the jury on conspiracy.
9. Whether the evidence was sufficient to support Denny's convictions.

HOLDINGS

1. A defendant seeking severance must clearly show prejudice. Denny failed to make that showing because the joint trial did not create confusion, the limiting instructions addressed evidence concerning other criminal acts, the defenses were not antagonistic, and Denny did not show that his brother could or would have provided exculpatory testimony.
2. A change of venue requires a showing that the trial setting was inherently prejudicial or that the jury-selection process demonstrated actual prejudice making a fair trial impossible. Denny made neither showing.
3. Under former OCGA § 17-8-4, whether to grant additional peremptory strikes in a joint trial was within the trial court's sole discretion, and Denny showed no abuse of that discretion or harm from the denial.
4. The trial court did not err by denying a mid-trial change of venue and mistrial based on a newspaper article because jurors had been instructed not to read news accounts, and Denny presented no evidence that any juror disobeyed the instruction.
5. The trial court properly admitted evidence of two independent crimes under the applicable Georgia similar-transaction standards.
6. The trial court did not err in failing to rebuke the prosecutor or declare a mistrial because the record did not show a contemporaneous objection on the asserted ground and the prosecutor's questioning did not disclose whether outstanding warrants existed.

7. Denny waived reliance on all but one of the asserted improprieties by failing to object, and the one preserved objection did not establish prosecutorial misconduct or a deliberate attempt to mislead the jury.
8. The trial court properly instructed the jury on conspiracy because the evidence authorized a finding that the defendants conspired to burglarize Kevin Rainwater's home.
9. The evidence was sufficient to enable a rational trier of fact to find Denny guilty beyond a reasonable doubt of the charged offenses.

KEY QUOTATIONS

“The evidence was sufficient to enable a rational trier of fact to find Denny guilty beyond a reasonable doubt of the crimes for which he was tried and convicted.” (at 505)

FACTUAL BACKGROUND

On January 24, 1990, Joe Rainwater and his son George were shot and killed at the home of Joe's son, Kevin, during a burglary. According to the evidence, Denny, his brother Michael, and Russell Brown selected and entered the home; Denny forced the victims inside and directed Michael to shoot them. Investigators later connected Michael to the crime through DNA recovered from a cigarette butt, and further investigation linked Denny to the group through his arrest with Michael and Brown in Denny's white van.

PROCEDURAL HISTORY

A Coweta County grand jury indicted Denny and his brother Michael for offenses arising from the killings of Joe and George Rainwater. Denny was tried jointly with Michael and convicted on February 13, 2004; he received consecutive life sentences for the murders, a concurrent twenty-year sentence for burglary, and a consecutive five-year sentence for possession of a firearm or knife, while the felony-murder convictions were vacated as a matter of law. The trial court denied Denny's motion for new trial on May 19, 2005. After an initial appeal was dismissed as untimely, the trial court granted an out-of-time appeal, which proceeded to the Supreme Court of Georgia. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Rhodes v. State, 279 Ga. 587, 589(3), 619 S.E.2d 659 (2005)
- Howard v. State, 279 Ga. 166, 171(4), 611 S.E.2d 3 (2005)
- Adkins v. State, 279 Ga. 424, 426(3), 614 S.E.2d 67 (2005)
- Maddox v. State, 278 Ga. 823, 825(2), 607 S.E.2d 587 (2005)
- Roundtree v. State, 270 Ga. 504, 505(2), 511 S.E.2d 190 (1999)
- Adams v. State, 264 Ga. 71, 74(5), 440 S.E.2d 639 (1994)
- Young v. State, 280 Ga. 65, 68(9), 623 S.E.2d 491 (2005)

- Todd v. State, 243 Ga. 539, 545(8), 255 S.E.2d 5 (1979)
- Williams v. State, 261 Ga. 640, 642-643(2), 409 S.E.2d 649 (1991)
- Denny v. State, 280 Ga. 81, 83(2), 623 S.E.2d 483 (2005)
- Hudson v. State, 250 Ga. 479, 484(4), 299 S.E.2d 531 (1983)
- Johnson v. State, 198 Ga. App. 316(7), 401 S.E.2d 331 (1991)
- Moore v. State, 280 Ga. 766(2), 632 S.E.2d 632 (2006)
- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)

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