

SUPREME COURT OF GEORGIA

Ellis v. State, 285 Ga. 756

684 S.E.2d 263 (2009) · No. S09A0767 · Decided September 28, 2009

SUMMARY

The Supreme Court of Georgia held that Ellis's prior guilty plea to felony cruelty to children did not bar subsequent prosecution for murder or felony murder because the victim died after the prior conviction. However, the court held that the prior prosecution barred a separate aggravated assault charge arising from the same conduct because the relevant facts were known when the initial prosecution began and no separate-trial order had been entered.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Melton, Justice
JURISDICTION	Georgia
DECIDED	September 28, 2009
DOCKET	S09A0767
DISPOSITION	reversed
PROCEDURAL POSTURE	Ellis appealed the trial court's denial of his Motion to Dismiss and Plea in Bar, arguing that his prior guilty plea and conviction barred subsequent prosecution for murder, felony murder, and aggravated assault arising from the same conduct.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Georgia
PARTIES	Benjamin Martin Ellis v. State

TOPICS

- double jeopardy
- criminal procedure
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- double jeopardy
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the prior felony-cruelty-to-children conviction barred subsequent prosecution for malice murder and felony murder after the victim later died.
2. Whether the prior conviction barred a separate prosecution for aggravated assault arising from the same conduct when the facts supporting aggravated assault were known to the prosecutor at the time of the initial prosecution.

HOLDINGS

1. The prior conviction for felony cruelty to children did not bar the subsequent prosecution for malice murder or felony murder because the murder was not complete, and the victim had not died, when the earlier conviction occurred.
2. The State could not separately prosecute Ellis for aggravated assault arising from the shaking incident because all facts necessary to support that charge were known to the prosecutor when the cruelty-to-children prosecution began, and no order authorized separate trials in the interest of justice.

KEY QUOTATIONS

“Since the murder was not yet complete because the victim had not died at the time of the [cruelty to children] conviction, the subsequent prosecution for murder [was] not barred by the express terms of [OCGA §§ 16-1-7(b) and 16-1-8(b) dealing with procedural double jeopardy].” (684 S.E.2d at 264)

“If . . . several crimes arising from the same conduct are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution except [where] the court in the interest of justice [has] order[ed] that one or more of such charges be tried separately.” (684 S.E.2d at 264-265)

FACTUAL BACKGROUND

Ellis was arrested after repeatedly shaking Kayla McCoy, a child, causing serious injuries. He pleaded guilty to felony cruelty to children in 2002 and received a fifteen-year sentence. McCoy later died allegedly from the injuries, and in 2008 the State charged Ellis with malice murder, felony murder, and aggravated assault based on the same shaking incident.

PROCEDURAL HISTORY

Ellis pleaded guilty in 2002 to felony cruelty to children and was sentenced to fifteen years. After the child victim died in 2008, the State indicted Ellis for malice murder, felony murder, and aggravated assault. The trial court denied Ellis's Motion to Dismiss and Plea in Bar, and the Supreme Court of Georgia affirmed in part and reversed in part.

DISPOSITION

reversed

CASES CITED

- *Lowe v. State*, 240 Ga. 767, 768(1), 242 S.E.2d 582 (1978)
- *State v. McCrary*, 253 Ga. 747, 325 S.E.2d 151 (1985)
- *Billups v. State*, 228 Ga. App. 804(1), 493 S.E.2d 8 (1997)
- *Bell v. State*, 249 Ga. 644, 646(3), 292 S.E.2d 402 (1982)

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