

SUPREME COURT OF NORTH CAROLINA

State of North Carolina v. Brandon Cabott Jones, 357 N.C. 409

584 S.E.2d 751 (2003) · No. No. 115A02 · Decided August 22, 2003

SUMMARY

The Supreme Court of North Carolina reviewed Brandon Cabott Jones's convictions for two felony murders and related offenses, along with his capital sentencing proceeding. The court rejected challenges concerning appointed counsel, the defendant's right to testify, and a purported variance between the robbery indictment and the evidence. It held that the trial court's instruction on the pecuniary-gain aggravating circumstance improperly made that circumstance effectively mandatory upon a finding of robbery with a dangerous weapon.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Orr, Justice
JURISDICTION	North Carolina
DECIDED	August 22, 2003
DOCKET	No. 115A02
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed his convictions and capital sentencing judgments to the Supreme Court of North Carolina, raising issues concerning counsel, the right to testify, sufficiency and variance, sentencing instructions, and proportionality review.
STANDARD OF REVIEW	Denial of a motion to remove appointed counsel is reviewed for abuse of discretion. Ineffective-assistance claims are evaluated under the two-prong Strickland standard. Unpreserved instructional error is reviewed for plain error, requiring a probable impact on the jury's verdict or a miscarriage of justice.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Brandon Cabott Jones v. State of North Carolina

TOPICS

- sentencing
- jury instructions
- criminal procedure
- ineffective assistance
- appellate procedure

PRACTICE AREAS

criminal law

capital punishment

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying defendant's motions to dismiss appointed counsel.
2. Whether the trial court was required to inquire sua sponte whether defendant wished to testify.
3. Whether a variance between the robbery indictment and the evidence rendered the evidence insufficient to support felony murder.
4. Whether the capital-sentencing instruction on the pecuniary-gain aggravating circumstance improperly made that circumstance automatic upon a finding of robbery with a dangerous weapon.
5. Whether defendant's death sentence was disproportionate.

HOLDINGS

1. The trial court did not abuse its discretion in denying defendant's motions to dismiss appointed counsel because defendant failed to show that counsel's performance fell below the objective standard of reasonableness required by Strickland.
2. The trial court was not required to inquire sua sponte whether defendant wished to testify, and the court declined to overrule *State v. Hayes*.
3. There was no fatal variance between the indictment alleging that property was taken from Donald James Hunt and the evidence concerning property taken from Hunt, Jr.; the evidence supported an inference that the briefcase belonged to the senior Hunt.
4. The trial court committed plain error by instructing the capital-sentencing jury that if it found defendant committed robbery with a dangerous weapon, it would find the pecuniary-gain aggravating circumstance.
5. The court did not conduct proportionality review because defendant's death sentence was being vacated and the case remanded for a new capital sentencing proceeding.

KEY QUOTATIONS

"Thus, the occurrence of a robbery with a dangerous weapon does not and cannot automatically allow the jury to find the existence of the (e)(6) pecuniary gain aggravating circumstance." (at 759)

"Because the instruction did not allow the jury to consider the evidence relating to whether 'the killing was for the purpose of getting money or something of value,' we cannot say that this error could not have influenced the jury's finding of this aggravating circumstance." (at 760)

"Accordingly, we vacate defendant's death sentence and remand this case to the trial court for a new capital sentencing proceeding." (at 760)

FACTUAL BACKGROUND

On August 13, 1999, defendant and two accomplices entered the Hunts' home in Gastonia while the occupants were asleep, held them at gunpoint, demanded money and drugs, and took property. During a struggle in a bedroom, Donald James Hunt and accomplice Devan Lashawn Bynum were shot; both died. Defendant and another accomplice helped Bynum leave the home, and police later arrested defendant and recovered jewelry and money from his motel room.

PROCEDURAL HISTORY

Defendant was indicted for two first-degree murders and related kidnapping, robbery, and breaking-or-entering offenses. The trial court dismissed the kidnapping counts, the jury convicted defendant of the remaining charges, and the jury recommended death for one murder and life imprisonment for the other. The trial court entered judgment accordingly, imposed an additional consecutive sentence for breaking or entering, and arrested judgment on the robbery conviction. The Supreme Court of North Carolina found no error in the guilt-innocence proceedings but vacated the death sentence because of plain error in the pecuniary-gain aggravating-circumstance instruction and remanded for a new capital sentencing proceeding.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the trial court for a new capital sentencing proceeding. The guilt-innocence judgments were left undisturbed.

CASES CITED

- State v. Hutchins, 303 N.C. 321, 336, 279 S.E.2d 788, 798 (1981)
- State v. T.D.R., 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998)
- State v. Thomas, 350 N.C. 315, 328-29, 514 S.E.2d 486, 495 (1999)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Lee, 348 N.C. 474, 491, 501 S.E.2d 334, 345 (1998)
- Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003)
- State v. Gray, 292 N.C. 270, 281, 233 S.E.2d 905, 913 (1977)
- State v. Hayes, 314 N.C. 460, 474-75, 334 S.E.2d 741, 750 (1985)
- State v. Bell, 270 N.C. 25, 29, 153 S.E.2d 741, 744 (1967)
- State v. Berry, 356 N.C. 490, 523, 573 S.E.2d 132, 153 (2002)
- State v. Holden, 346 N.C. 404, 435, 488 S.E.2d 514, 531 (1997)
- State v. Robinson, 342 N.C. 74, 81, 463 S.E.2d 218, 223 (1995)
- State v. Bacon, 337 N.C. 66, 99, 446 S.E.2d 542, 559 (1994)
- State v. Daniels, 337 N.C. 243, 280, 446 S.E.2d 298, 321 (1994)
- State v. Barden, 356 N.C. 316, 383, 572 S.E.2d 108, 150 (2002)

- State v. White, 355 N.C. 696, 710, 565 S.E.2d 55, 64 (2002)
- State v. Davis, 353 N.C. 1, 36, 539 S.E.2d 243, 266 (2000)
- State v. Bishop, 343 N.C. 518, 556, 472 S.E.2d 842, 863 (1996)
- State v. Jennings, 333 N.C. 579, 620-21, 430 S.E.2d 188, 209-10 (1993)
- State v. Chandler, 342 N.C. 742, 754-55, 467 S.E.2d 636, 643 (1996)
- State v. Jones, 327 N.C. 439, 452, 396 S.E.2d 309, 316 (1990)
- State v. Williams, 317 N.C. 474, 486, 346 S.E.2d 405, 413 (1986)

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