

SUPREME COURT OF GEORGIA

Collett v. State, 305 Ga. 853

828 S.E.2d 362 (2019) · Decided May 20, 2019

SUMMARY

The Georgia Supreme Court affirmed Shane Collett’s convictions for malice murder and concealing the death of another in connection with the death of nine-year-old Skylar Dials. The court held that the circumstantial evidence was sufficient to support the convictions and that the trial court properly declined to instruct the jury on reckless conduct or mistake of fact because those instructions were not supported by the evidence.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Peterson, Justice; All Justices
JURISDICTION	Georgia
DECIDED	May 20, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Collett appealed his convictions for malice murder and concealing the death of another, challenging the sufficiency of the evidence and the trial court's refusal to give requested jury instructions on reckless conduct and mistake of fact.
STANDARD OF REVIEW	The evidence is viewed in the light most favorable to the verdict, and the convictions are upheld if a rational trier of fact could find guilt beyond a reasonable doubt. In a circumstantial-evidence case, the jury determines the reasonableness of alternative hypotheses, and the Supreme Court will not disturb that determination unless it is insupportable as a matter of law. A requested jury instruction must be legal, apt, precisely adjusted to an issue in the case, and authorized by the evidence.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Georgia
PARTIES	Shane Collett v. State

TOPICS

criminal procedure

jury instructions

lesser included offense instructions

mens rea

burden of proof

PRACTICE AREAS

criminal law

criminal procedure

evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Collett's convictions for malice murder and concealing the death of another.
2. Whether the trial court erred by refusing to instruct the jury on the lesser-included offense of reckless conduct.
3. Whether the trial court erred by refusing to instruct the jury on mistake of fact.

HOLDINGS

1. The evidence was sufficient for a rational trier of fact to exclude every other reasonable hypothesis and find beyond a reasonable doubt that Collett murdered Dials and concealed her death.
2. The trial court properly refused to instruct the jury on reckless conduct because the evidence did not show that dropping or placing Dials's body in the brush pile caused her death or constituted the charged culpable conduct.
3. The trial court properly refused to instruct the jury on mistake of fact because Collett's asserted ignorance of the precise moment of Dials's death did not negate the mental state associated with the lethal act.

KEY QUOTATIONS

"In cases like this one where convictions are based on circumstantial evidence, the evidence must be 'consistent with the hypothesis of guilt' and 'exclude every other reasonable hypothesis save that of the guilt of the accused.'" (855)

"A requested jury charge must be 'legal, apt, and precisely adjusted to some principle involved in the case and be authorized by the evidence.'" (856)

"Reckless conduct is an act of criminal negligence, rather than an intentional act, that causes bodily harm or endangers the bodily safety of another." (856)

FACTUAL BACKGROUND

Nine-year-old Skylar Dials disappeared after leaving home to play next door at the residence where Collett lived. Her body was found in a brush pile behind her home, with injuries indicating prolonged neck compression and asphyxiation; fibers from Collett's room, including fibers from his bed blanket, were found on her sweater. Collett repeatedly changed his account, denied seeing Dials, failed to disclose her location, and ultimately claimed that she had been accidentally knocked unconscious and was still breathing when he moved her. The medical examiner concluded that the fatal injury was prolonged neck compression that would have taken several minutes to cause unconsciousness and death and was not accidental.

PROCEDURAL HISTORY

A Spalding County grand jury indicted Collett on April 30, 2013. Following a January 2015 jury trial, he was convicted on all counts and sentenced to life without parole for malice murder and ten years concurrent for concealing the death of another; the remaining counts were merged or vacated by operation of law. The trial court denied Collett's amended motion for new trial on August 17, 2017, and Collett timely appealed. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Akhimie v. State, 297 Ga. 801, 804 (1), 777 S.E.2d 683 (2015)
- Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)
- Stokes v. State, 281 Ga. 875, 877-878 (3), 644 S.E.2d 116 (2007)
- Bryson v. Jackson, 299 Ga. 751, 755 (2)(d), 791 S.E.2d 43 (2016)
- Salyers v. State, 276 Ga. 568, 569 (2), 580 S.E.2d 240 (2003)
- Allen v. State, 290 Ga. 743, 747 (5), 723 S.E.2d 684 (2012)
- Dixon v. State, 302 Ga. 691, 697-698 (4), 808 S.E.2d 696 (2017)
- White v. State, 287 Ga. 713, 714-715 (1)(a), 699 S.E.2d 291 (2010)

OPINION

PETERSON, J.

Peterson, Justice. **853Shane Collett appeals his convictions for malice murder and concealing the death of another in connection with the 2012 death of nine-year-old Skylar Dials.¹ Collett challenges *364the sufficiency of the evidence to support these convictions and argues that the trial court **854erred by failing to instruct the jury on the lesser-included offense of reckless conduct or on mistake of fact.

We affirm because the evidence was sufficient and the instructions were unwarranted. Viewed in the light most favorable to the verdicts, the evidence at trial shows that Dials lived with her guardians, Renas and Robert Lupas, and their family in Spalding County.

On the morning of December 21, 2012, Dials left her home to play with her friend C.P., who lived next door with her family and Collett. When Dials failed to return by 3:00 p.m., Ms. Lupas became concerned and went over to C.P.'s house. Collett answered the door and told them that Dials was not there. C.P. and her mother said Dials never came to the house.

The Lupases and neighbors began searching for Dials and calling out her name. Collett pretended to help but never went near the brush piles behind the house where Dials's body was later found. Failing to find her, Ms. Lupas called the police, who conducted an extensive search for Dials.

During the course of the search, the police interviewed Collett several times; each time he denied ever seeing Dials but changed the particulars of his story.

During these interactions Collett made little to no eye contact with investigators and expressed no emotion. He also peered through the back window of his house while police searched for Dials. Around 2:00 a.m on December 22, 2012, the police found Dials's body in a brush pile behind her home. Her sweater was torn and pulled up near her head. She had scratch marks and bruising on her face and neck.

Police recovered Dials's clothes, and examiners later identified multiple fibers from Collett's room on Dials's sweater, including a clump of fibers from the blanket on his bed. Examiners determined that this concentration of fibers would not have appeared by mere accident or momentary transfer, but required prolonged contact. There was also no evidence that Dials had been moved after having been placed in the brush pile.

After finding Dials's body, the police questioned Collett once more, and he changed his story yet again. After being advised of his rights, Collett said that Dials had come to the house while he was asleep and that she surprised him, causing him to jump up and knock her to the floor, rendering her unconscious. He claimed that he then moved her from the bedroom to the brush pile.

He claimed that she ^{**855}was still breathing at the time and that she was not in the pile when he went to check on her later. The medical examiner found that the injury to Dials's head was not severe enough to have caused unconsciousness. Based on the marks on her neck, bleeding under the skin around her eyes, and swelling of her brain, the medical examiner determined that Dials's cause of death was asphyxiation resulting from prolonged neck compression.

The medical examiner opined that it would have taken several minutes for Dials to reach unconsciousness and then die. He did not believe the trauma could have been accidental. 1. Collett challenges the sufficiency of the evidence to convict him of malice murder and concealing the death of another in connection with the death of Dials.2 We disagree. ^{*365}In cases like this one where convictions are based on circumstantial evidence, the evidence must be "consistent with the hypothesis of guilt" and "exclude every other reasonable hypothesis save that of the guilt of the accused."

OCGA § 24-14-6. Not every hypothesis is reasonable, and the reasonableness of alternative hypotheses raised by a defendant is a question principally for the jury. *Akhimie v. State*, 297 Ga. 801, 804 (1), 777 S.E.2d 683 (2015). Where the jury is authorized to find the evidence sufficient to exclude every reasonable hypothesis save that of the accused's guilt, "this Court will not disturb that finding unless it is insupportable as a matter of law."

Id. When reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the verdict. *Jackson v. Virginia*, 443 U. S. 307, 319, 99 S.Ct. 2781, 61 L.E.2d

560 (1979). Collett argues that he did not know that Dials was dead when he placed her body in the brush pile and that the State failed to prove (1) that doing so was an act known to cause a substantial certainty of death, (2) that he desired to cause her death, or (3) the exact scene or manner of death.

But the evidence viewed in the light most favorable to the verdicts indicates that Collett compressed Dials's neck for an extended period of time in his room until she asphyxiated. The evidence also indicates that Collett carried her out of the house, placed her body face up in a brush pile, feigned participation in the initial search party, and (despite repeated interviews with the police) failed to inform the police as to Dials's location.

Given these facts, a rational trier of fact could have excluded every other reasonable hypothesis **856 and found beyond a reasonable doubt that Collett murdered Dials and concealed her death.

2. Collett argues that the trial court erred when it failed to instruct the jury on the lesser-included offense of reckless conduct or on mistake of fact as he requested with respect to the murder and child cruelty charges.

We disagree. A requested jury charge must be "legal, apt, and precisely adjusted to some principle involved in the case and be authorized by the evidence." *Stokes v. State*, 281 Ga. 875, 877-878 (3), 644 S.E.2d 116 (2007).

Although it is error to deny a jury charge that is warranted by the evidence, there is no error in refusing to give a charge that is not. *Id.*; *Bryson v. Jackson*, 299 Ga. 751, 755 (2) (d), 791 S.E.2d 43 (2016). (a) "Reckless conduct is an act of criminal negligence, rather than an intentional act, that causes bodily harm or endangers the bodily safety of another."

Salysers v. State, 276 Ga. 568, 569 (2), 580 S.E.2d 240 (2003) (citation and punctuation omitted); OCGA § 16-5-60 (b). Collett contends that the act of dropping Dials's body into the brush pile may have caused her injuries. There is no evidence, however, that dropping Dials's body into the brush pile caused her death. Instead, all of the evidence shows that Collett inflicted the fatal injuries before she was moved. (b) Mistake of fact is a defense where there is a misapprehension of a fact that would have justified the act by negating the mental state required to have committed the crime.

Allen v. State, 290 Ga. 743, 747 (5), 723 S.E.2d 684 (2012); OCGA § 16-3-5. Collett contends that Dials was still breathing when he placed her in the woodpile. The un rebutted testimony of the medical examiner shows that Collett's prolonged compression of Dials's neck ultimately caused her death. Collett's ignorance of the exact moment of her death does not negate his mental state in performing the lethal act.

The trial court did not err in refusing to instruct the jury as to reckless conduct or mistake of fact as requested because neither charge was supported by the evidence. Judgment affirmed. All the

Justices concur. Collett was indicted by a Spalding County grand jury on April 30, 2013 for malice murder, two counts of felony murder, aggravated assault, cruelty to children in the first degree, and concealing the death of another.

At a trial in January 2015, the jury found Collett guilty on all counts. Collett was sentenced to life without the possibility of parole for malice murder and ten years concurrent for concealing the death of another.

The trial court determined that the remaining counts were merged or vacated by operation of law and the State has not cross-appealed these conclusions, so we do not review them. See *Dixon v. State*, 302 Ga. 691, 697-698 (4), 808 S.E.2d 696 (2017). Collett timely filed a motion for new trial on February 24, 2015, and amended it on May 16, 2016, and December 8, 2016.

On August 17, 2017, the trial court denied the amended motion for new trial. Collett timely filed his notice of appeal. His appeal was docketed in this Court for the term beginning in December 2018 and was submitted for decision on the briefs. While Collett challenges the sufficiency of the evidence to sustain all of the guilty verdicts against him, his challenges to the counts other than malice murder and concealing the death of another are moot because those counts were merged or vacated by operation of law.

See *White v. State*, 287 Ga. 713, 714-715 (1) (a), 699 S.E.2d 291 (2010).