

SUPREME COURT OF GEORGIA

Mercer v. Johnson, 304 Ga. 219

818 S.E.2d 246 (2018) · Decided August 14, 2018

SUMMARY

The Georgia Supreme Court reversed the denial of Jessie Mercer's habeas corpus petition. Applying the asportation factors from *Garza v. State*, the court held that the movements of Richard and Parchando Love during an armed home invasion were insufficient to support Mercer's kidnapping convictions. The court concluded that the evidence did not show movement substantially isolating either victim from protection or rescue.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Chief Justice; Melton, Presiding Justice; Benham, Justice; Hunstein, Justice; Nahmias, Justice; Blackwell, Justice; Boggs, Justice; Peterson, Justice
JURISDICTION	Georgia
DECIDED	August 14, 2018
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the denial of a state habeas corpus petition challenging kidnapping convictions based on insufficient evidence of asportation; the Supreme Court of Georgia granted Mercer's application for a certificate of probable cause to appeal.
STANDARD OF REVIEW	The sufficiency of the evidence supporting the kidnapping convictions was reviewed under the <i>Garza</i> asportation framework; the Supreme Court reviewed the habeas court's judgment on the legal sufficiency issue.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; binding precedent within Georgia subject to later statutory modification of the asportation standard.
PARTIES	Jessie Mercer v. Johnson

TOPICS

post-conviction relief

habeas corpus

criminal procedure

PRACTICE AREAS

criminal procedure

state post-conviction relief

habeas corpus

QUESTIONS PRESENTED

1. Whether the movement of Mr. Love from a standing position to the floor constituted asportation sufficient to support his kidnapping conviction.
2. Whether the movement of Mrs. Love to a safe and back to the bedroom, as well as the other movements during the home invasion, constituted asportation sufficient to support her kidnapping conviction.
3. Whether the asportation standard announced in *Garza v. State* applied retroactively to Mercer's state habeas proceeding.

HOLDINGS

1. Garza effected a substantive change in the law governing asportation and therefore applies retroactively to Mercer's habeas proceeding.
2. Moving Mr. Love from a standing position to the floor did not constitute asportation sufficient to support his kidnapping conviction.
3. The movements of Mrs. Love, including dragging her to the safe and back to the bedroom, did not constitute asportation sufficient to support her kidnapping conviction.

KEY QUOTATIONS

"What must be kept in mind is the purpose of the Garza test, which is to determine whether the movement in question served to substantially isolate the victim from protection or rescue, the evil which the kidnapping statute was originally intended to address." (304 Ga. at 220)

"Accordingly, this movement did not constitute the asportation necessary to support appellant's conviction for kidnapping Mr. Love." (304 Ga. at 221)

"For the foregoing reasons, there was insufficient evidence of asportation to support appellant's convictions for kidnapping Mr. and Mrs. Love." (304 Ga. at 224)

FACTUAL BACKGROUND

Three armed intruders, including Mercer, entered Richard and Parchando Love's home, entered their bedroom, pointed handguns at them, restrained them, and demanded money. Mr. Love was moved from a standing position to the floor. Mrs. Love was moved to disable the alarm and was later dragged approximately 25 to 30 feet from the bedroom to a safe and back after the intruders threatened her and demanded to know where money was located. The intruders ultimately took \$5,000 hidden under a mattress.

PROCEDURAL HISTORY

Mercer was convicted in 2004 of two counts of kidnapping, armed robbery, and two counts of aggravated assault. The Court of Appeals affirmed the kidnapping conviction involving Mr. Love after rejecting Mercer's asportation challenge, although Mercer did not challenge the conviction involving Mrs. Love on direct appeal. In

2011, Mercer filed a habeas petition asserting that the evidence was insufficient under the asportation standard later adopted in *Garza v. State*. The habeas court denied the petition on June 29, 2016, and the Supreme Court of Georgia reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment denying Mercer's habeas petition was reversed. The supplied opinion does not state further specific remand instructions.

CASES CITED

- *Mercer v. State*, 289 Ga. App. 606, 658 S.E.2d 173 (2008)
- *Garza v. State*, 284 Ga. 696, 670 S.E.2d 73 (2008)
- *Gonzalez v. Hart*, 297 Ga. 670, 777 S.E.2d 456 (2015)
- *Peoples v. State*, 295 Ga. 44, 757 S.E.2d 646 (2014)
- *Levin v. Morales*, 295 Ga. 781, 764 S.E.2d 145 (2014)
- *Henderson v. State*, 285 Ga. 240, 675 S.E.2d 28 (2009)
- *Upton v. Hardeman*, 291 Ga. 720, 732 S.E.2d 425 (2012)
- *Williams v. State*, 291 Ga. 501, 732 S.E.2d 47 (2012)
- *Sellars v. Evans*, 293 Ga. 346, 745 S.E.2d 643 (2013)
- *Brown v. State*, 288 Ga. 902, 708 S.E.2d 294 (2011)
- *Rayshad v. State*, 295 Ga. App. 29, 670 S.E.2d 849 (2008)