

COURT OF APPEALS OF GEORGIA

LaPan v. State, 167 Ga. App. 250

305 S.E.2d 858 (1983) · No. 65440 · Decided June 17, 1983

SUMMARY

The Georgia Court of Appeals reviewed convictions for rape and aggravated sodomy arising from sexual offenses against the defendant's nine-year-old stepdaughter. The court upheld the convictions, rejecting claims concerning sufficiency of the evidence, impeachment instructions, a lesser-included-offense instruction, and the use of a statutory charging period. It held that separate sentences for three rape convictions were improper because the indictments differed only in their nonessential dates, and remanded solely to vacate two of those sentences.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Deen, Presiding Judge; Banke, Judge; Carley, Judge
JURISDICTION	Georgia
DECIDED	June 17, 1983
DOCKET	65440
DISPOSITION	affirmed
PROCEDURAL POSTURE	LaPan appealed his convictions and sentences for rape and aggravated sodomy, challenging the sufficiency of the evidence, jury instructions, the permissible date range for the offenses, and the imposition of separate sentences for three rape convictions.
STANDARD OF REVIEW	The court reviewed the sufficiency of the evidence to determine whether a reasonable trier of fact could find guilt beyond a reasonable doubt, reviewed jury instructions for legal error, and reviewed the sentencing issue for whether separate sentences were legally authorized.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	Ronald Edward LaPan v. The State

TOPICS

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PRACTICE AREAS

Georgia criminal law

criminal procedure

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the convictions and whether the trial court erred by denying a directed verdict of acquittal.
2. Whether the jury instructions adequately addressed witness credibility and impeachment.
3. Whether the trial court was required to instruct the jury on simple sodomy as a lesser included offense of aggravated sodomy.
4. Whether the trial court properly instructed the jury that the offenses could be found to have occurred at any time within the applicable four-year statutory period.
5. Whether separate sentences could be imposed for three rape convictions when the indictments differed only in their alleged dates and date was not an essential element of the offense.

HOLDINGS

1. The evidence was sufficient to enable a reasonable jury to find LaPan guilty beyond a reasonable doubt, and the trial court properly denied the motion for a directed verdict of acquittal.
2. The trial court did not err by declining to give the requested impeachment instruction in the exact language requested because the charge fairly and substantially covered credibility, impeachment, and the effect of impeachment, and no material impeachment had occurred.
3. The trial court was not required to instruct on simple sodomy because the evidence supported only aggravated sodomy.
4. The instruction was not reversible error because the dates were not essential elements, LaPan was adequately informed of the charges, and the date discrepancy did not surprise or prejudice his alibi defense.
5. Only one sentence could be imposed for the three rape convictions because the indictments differed only in their alleged dates and date was not an essential element of rape.

KEY QUOTATIONS

"The crucial distinction between simple sodomy and aggravated sodomy is that the latter is accomplished 'with force and against the will.'" (253)

"Since all the dates alleged fall within the period of the statute of limitation, only one sentence can be imposed." (254)

FACTUAL BACKGROUND

LaPan's nine-year-old stepdaughter testified that he committed multiple acts of rape and sodomy during September and December 1981, threatening to kill her if she disclosed the conduct. Medical examinations confirmed vaginal penetration, and the child identified the dates primarily by reference to school and her

mother's work schedule. LaPan presented an alibi defense, but portions of his employer's records undermined the alibi for the dates of the first and last alleged incidents.

PROCEDURAL HISTORY

A Chatham County jury found LaPan guilty under four indictments: three for rape and one for aggravated sodomy. The trial court imposed concurrent twenty-year sentences for the rape convictions and a consecutive twenty-year sentence for aggravated sodomy. The Court of Appeals affirmed the judgment but remanded with direction to vacate two of the three rape sentences.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand solely to vacate two of the three twenty-year sentences imposed on the rape convictions. The twenty-year sentence for aggravated sodomy remains unaffected.

CASES CITED

- Jackson v. Virginia, 443 U.S. 307 (1979)
- Crawford v. State, 245 Ga. 89, 263 S.E.2d 131 (1980)
- Barnes v. State, 245 Ga. 609, 266 S.E.2d 212 (1980)
- Hand v. Hand, 244 Ga. 41, 257 S.E.2d 507 (1979)
- Watkins v. Davis, 152 Ga. App. 735, 263 S.E.2d 704 (1979)
- Gilbert v. State, 159 Ga. App. 326, 283 S.E.2d 361 (1981)
- Hill v. State, 159 Ga. App. 489, 283 S.E.2d 703 (1981)
- Malone v. State, 142 Ga. App. 47, 234 S.E.2d 844 (1977)
- State v. Stonaker, 236 Ga. 1, 222 S.E.2d 354 (1976)
- Carter v. State, 122 Ga. App. 21, 176 S.E.2d 238 (1970)
- Thomas v. State, 158 Ga. App. 97, 279 S.E.2d 335 (1981)
- De Palma v. State, 225 Ga. 465, 169 S.E.2d 801 (1969)
- Caldwell v. State, 139 Ga. App. 279, 228 S.E.2d 219 (1976)
- Miller v. State, 141 Ga. App. 382, 233 S.E.2d 460 (1977)
- Smith v. State, 160 Ga. App. 26, 285 S.E.2d 749 (1981)
- Miller v. State, 141 Ga. App. 382, 233 S.E.2d 460 (1977)
- Cole v. State, 120 Ga. 485, 48 S.E. 156 (1904)