

SUPREME COURT OF GEORGIA

Moon v. The State

Moon · No. S21A0454 · Decided June 21, 2021

SUMMARY

The Supreme Court of Georgia held that the evidence was sufficient to support Walter Terry Moon, Jr.'s convictions for murder and firearm offenses as a party to the crimes. The court reversed the convictions because the trial court abused its discretion by removing a holdout juror during deliberations without a sufficient factual and legal basis. The court also held that the State failed to prove venue for the attempted firearm-purchase count, allowing retrial of that count in the proper venue.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Ellington, Justice
JURISDICTION	Georgia
DECIDED	June 21, 2021
DOCKET	S21A0454
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Moon appealed from the denial of his amended motion for new trial following convictions for murder and other offenses. The Supreme Court of Georgia addressed the claims likely to recur upon retrial and reversed the convictions because the trial court abused its discretion by removing a holdout juror during deliberations without a sound factual and legal basis.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed under the federal due-process standard by viewing the evidence in the light most favorable to the verdict and asking whether a rational trier of fact could find guilt beyond a reasonable doubt; alternative hypotheses under Georgia circumstantial-evidence law are generally for the jury. Juror removal is reviewed for abuse of discretion, but heightened scrutiny and a thorough inquiry are required when removal occurs after deliberations have begun or when the jury is deadlocked. Search-warrant probable cause is reviewed under the Gates totality-of-the-circumstances standard, with substantial deference to the magistrate; disputed factual

	findings on a suppression motion are reviewed for clear error and legal conclusions de novo. Rule 404 (b) and Rule 403 evidentiary rulings are reviewed for abuse of discretion. Joinder and severance rulings are reviewed for abuse of discretion when severance is not mandatory.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Walter Terry Moon, Jr. v. The State

TOPICS

criminal procedure jury selection suppression of evidence probable cause evidence

PRACTICE AREAS

criminal law criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Moon's convictions as a party to the murders and firearm offenses.
2. Whether the State proved venue for Count 18, which charged an attempt to purchase an AK-47 rifle.
3. Whether the trial court abused its discretion by removing a holdout juror during deliberations without a sufficient inquiry or legally sufficient cause.
4. Whether evidence of Moon's 2005 aggravated assaults was admissible under Georgia Rule of Evidence 404 (b) to prove intent, motive, or identity and whether it should have been excluded under Rule 403.
5. Whether the search warrant for Moon's residence was supported by probable cause.
6. Whether Count 18 was properly joined with the murder counts or should have been severed.

HOLDINGS

1. The trial court abused its discretion by removing Juror No. 7 after the jury had begun deliberating and had become deadlocked because the court's limited inquiry did not establish a sound factual and legal basis for concluding that the juror was incapacitated, refusing to deliberate, or guilty of misconduct.
2. The trial evidence was sufficient to support Moon's convictions for murder and firearm offenses as a party to the crimes, under both federal due process and Georgia's circumstantial-evidence statute.
3. The State failed to prove venue for the attempted firearm-purchase offense charged in Count 18, requiring reversal of that conviction, but the State may retry Moon for that offense in the proper venue.
4. The 2005 aggravated-assault evidence was relevant and admissible under Rule 404 (b) to prove intent, but not to prove motive or identity.
5. The search warrant for Moon's residence was supported by probable cause, and the trial court properly denied the motion to suppress.

6. The trial court did not abuse its discretion by refusing to sever Count 18 from the murder counts because the offenses were based on a series of connected acts occurring close in time and the jury could distinguish the evidence.

KEY QUOTATIONS

“alternate jurors generally should not serve to substitute for minority jurors who cannot agree with the majority, as taking such a minority position does not by itself render a juror incapacitated or legally unfit to serve” (29-30)

“Because the judge’s limited inquiry into Juror No. 7’s alleged incapacity and misconduct fell short of providing a sound basis for the juror’s removal, we conclude that the judge abused her discretion in removing Juror No. 7.” (39-40)

“Given that this type of crime was not unique to Moon and because the two crimes, though similar, were not sufficiently uncommon so as to constitute a signature crime, the prior crimes were not admissible under Rule 404 (b) to prove identity.” (50-51)

FACTUAL BACKGROUND

In the early morning of September 1, 2012, a masked gunman repeatedly fired a high-velocity rifle into a Buick occupied by Emily Pickles and Michael Biancosino, killing both victims. Investigators concluded that Sidney Grant was the shooter and that Moon drove Grant to and from the scene in a rental Chevrolet Sonic; evidence included witness testimony, surveillance video, fingerprints, cell-phone records, a jailhouse statement attributed to Moon, and firearms and ammunition found at Moon's residence. The State also introduced evidence of Moon's 2005 aggravated-assault convictions arising from a prior AK-47 shooting. During deliberations, the trial court removed Juror No. 7 after other jurors identified her as the lone holdout and alleged that she was refusing to deliberate and had failed to disclose personal experiences during voir dire.

PROCEDURAL HISTORY

A Chatham County grand jury indicted Moon on 18 counts arising from the shooting deaths of Emily Pickles and Michael Biancosino. Following a 2016 jury trial, Moon was convicted on all counts except the marijuana count, which was nolle prossed; the felony-murder counts were vacated by operation of law and other counts merged for sentencing. The trial court denied Moon's amended motion for new trial on August 6, 2020, and Moon appealed. The Supreme Court of Georgia reversed the convictions and remanded for a new trial, while holding that Count 18 could be retried in a proper venue.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial. Count 18 may be retried in the proper venue. On retrial, the trial court should apply the court's guidance concerning removal of deliberating jurors and reconsider the extent of photographic evidence

offered under Rules 404 (b) and 403.

CASES CITED

- Frazier v. State, 308 Ga. 450, 452-453 (2) (a) (841 SE2d 692) (2020)
- Bryant v. State, 296 Ga. 456, 458 (1) (769 SE2d 57) (2015)
- Parks v. State, 304 Ga. 313, 315-316 (1) (a) (818 SE2d 502) (2018)
- Broxton v. State, 306 Ga. 127, 136 (4) (829 SE2d 333) (2019)
- Coates v. State, 304 Ga. 329, 331-332 (818 SE2d 622) (2018)
- Grier v. State, 275 Ga. 430, 431 (1) (569 SE2d 837) (2002)
- Mills v. State, 308 Ga. 558, 559-564 (2) (842 SE2d 284) (2020)
- Hill v. State, 263 Ga. 37, 41 (8) (427 SE2d 770) (1993)
- Ramos v. Louisiana, 140 S.Ct. 1390, 1397 (2020)
- United States v. Brown, 996 F3d 1171, 1184 (III) (A) (11th Cir. 2021)
- Wallace v. State, 303 Ga. 34, 38 (2) (810 SE2d 93) (2018)
- Delgado v. State, 356 Ga. App. 625, 630 (848 SE2d 665) (2020)
- Mason v. State, 244 Ga. App. 247, 249-250 (1) (535 SE2d 497) (2000)
- Bethea v. State, 337 Ga. App. 217, 219-220 (786 SE2d 891) (2016)
- Murray v. State, 276 Ga. 396, 399 (4) (578 SE2d 853) (2003)
- Green v. State, 298 Ga. App. 301, 302 (1) (680 SE2d 156) (2009)
- Wooten v. State, 250 Ga. App. 686, 687 (3) (552 SE2d 878) (2001)
- McGuire v. State, 200 Ga. App. 509, 510 (3) (408 SE2d 506) (1991)
- Strong v. State, 309 Ga. 295, 300-301, 309-312 (845 SE2d 653) (2020)
- Naples v. State, 308 Ga. 43, 51 (2) (e) (838 SE2d 780) (2020)
- Olds v. State, 299 Ga. 65, 72 (1) (786 SE2d 633) (2016)
- Downey v. State, 298 Ga. 568, 569 (1) (783 SE2d 622) (2016)
- Jackson v. State, 306 Ga. 69, 78 (2) (a) (ii) (829 SE2d 142) (2019)
- Brooks v. State, 298 Ga. 722, 725-726 (2) (783 SE2d 895) (2016)
- McKinney v. State, 307 Ga. 129, 136, 138 (3) (b) (834 SE2d 741) (2019)
- Amey v. State, 331 Ga. App. 244, 250 (1) (a) (770 SE2d 321) (2015)
- Kirby v. State, 304 Ga. 472, 484 (4) (a) (i) (819 SE2d 468) (2018)
- United States v. Bush, 673 Fed. Appx. 947, 951 (11th Cir. 2016)
- Palmer v. State, 310 Ga. 668, 671-673 (2) (a) (853 SE2d 650) (2021)
- Illinois v. Gates, 462 U.S. 213, 239 (1983)
- Williams v. State, 306 Ga. 365, 366 (828 SE2d 360) (2019)
- Carson v. State, 308 Ga. 761, 764-765 (2) (a) (843 SE2d 421) (2020)
- Keller v. State, 308 Ga. 492, 504-505 (7) (842 SE2d 22) (2020)
- Doleman v. State, 304 Ga. 740, 745 (3) (822 SE2d 223) (2018)

- Williams v. State, 299 Ga. 834, 840 (2) (792 SE2d 336) (2016)

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