

SUPREME COURT OF GEORGIA

Christian v. State, 281 Ga. 474

640 S.E.2d 21 (2007) · No. S06A1755 · Decided January 8, 2007

SUMMARY

The Supreme Court of Georgia affirmed Cheryl Christian’s convictions for felony murder, cruelty to children, and aggravated assault arising from the death of her three-year-old daughter. The court held that the evidence was sufficient and that the separate convictions did not merge into the felony-murder conviction. It also held that Christian was not denied her constitutional right to a speedy trial under the Barker v. Wingo balancing test.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice
JURISDICTION	Georgia
DECIDED	January 8, 2007
DOCKET	S06A1755
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a bench trial, Christian was convicted of felony murder, cruelty to children, and aggravated assault. The trial court denied her motion for a new trial and her motion to dismiss based on an alleged constitutional speedy-trial violation. She appealed.
STANDARD OF REVIEW	The evidence is viewed in the light most favorable to the verdict, and the conviction is upheld if a rational trier of fact could find guilt beyond a reasonable doubt under Jackson v. Virginia. A trial court's factual findings and weighing of disputed facts in a speedy-trial analysis are afforded deference on appeal.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; binding precedent in Georgia.
PARTIES	Cheryl Christian v. The State

TOPICS

speedy trial

criminal procedure

hearsay

evidence

PRACTICE AREAS

criminal procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Christian's convictions for felony murder, cruelty to children, and aggravated assault.
2. Whether the cruelty-to-children and aggravated-assault convictions merged into the felony-murder conviction for sentencing purposes.
3. Whether the delay between Christian's arrest and trial violated her constitutional right to a speedy trial.

HOLDINGS

1. The evidence was sufficient to authorize a rational trier of fact to find Christian guilty beyond a reasonable doubt of felony murder, cruelty to children, and aggravated assault.
2. The separate cruelty-to-children and aggravated-assault convictions did not merge into the felony-murder conviction, and separate sentences were authorized.
3. Christian was not unconstitutionally denied her right to a speedy trial.

KEY QUOTATIONS

"In examining an alleged denial of the constitutional right to a speedy trial, courts must engage in a balancing test with the following factors being considered: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of the right to a speedy trial; and (4) prejudice to the defendant." (24)

"Balancing these factors, we conclude that although the State was negligent in failing to bring [A]ppellant to trial in a timely fashion, that consideration is outweighed by the facts that [A]ppellant suffered little actual prejudice to [her] defense, suffered no unduly oppressive pretrial incarceration and waited a significant amount of time before asserting [her] right to a speedy trial." (25)

FACTUAL BACKGROUND

Christian's three-year-old daughter died shortly after suffering a fatal abdominal blow. Christian was the only adult in the house with the children during the relevant period; her son heard her threaten to whip the victim, and Christian initially admitted beating the child with a belt before later suggesting that she might have stepped on the child accidentally. The child weighed twenty-seven pounds, and the medical examiner testified that the fatal blow was not accidental and that death occurred within approximately an hour. Christian was arrested in May 1998 but was not brought to trial until June 2003.

PROCEDURAL HISTORY

Christian was arrested in May 1998, indicted in August 2001, reindicted on April 22, 2003, and tried in June 2003. The trial court entered judgments of conviction and imposed a life sentence for felony murder and concurrent twenty-year sentences for cruelty to children and aggravated assault. The trial court denied her motion for new trial on November 10, 2005, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)
- Williams v. State, 277 Ga. 598, 599(1), 592 S.E.2d 848 (2004)
- Wimberly v. State, 279 Ga. 65, 608 S.E.2d 625 (2005)
- Nelloms v. State, 274 Ga. 179, 180-81, 549 S.E.2d 381 (2001)
- Jackson v. State, 272 Ga. 782, 784-85, 534 S.E.2d 796 (2000)
- Perry v. Mitchell, 253 Ga. 593, 595, 322 S.E.2d 273 (1984)
- Williams v. State, 279 Ga. 106, 109(1)(d), 610 S.E.2d 32 (2005)
- Smith v. State, 275 Ga. 261, 263, 564 S.E.2d 441 (2002)
- Boseman v. State, 263 Ga. 730, 733(1)(d), 438 S.E.2d 626 (1994)
- Salahuddin v. State, 277 Ga. 561, 563(2), 592 S.E.2d 410 (2004)
- Brannen v. State, 274 Ga. 454, 458, 553 S.E.2d 813 (2001)
- Hardeman v. State, 280 Ga. App. 168, 171(4), 633 S.E.2d 595 (2006)

OPINION

CARLEY, J.

640 S.E.2d 21 (2007) CHRISTIAN v. The STATE. No. S06A1755. Supreme Court of Georgia. January 8, 2007. *23 Carl P. Greenberg, Atlanta, GA, for Appellant. Paul L. Howard, Jr., Dist. Atty., Peggy Ann Katz, Asst. Dist. Atty., Thurbert E. Baker, Atty. Gen., Laura D'Ann Dyes, Asst. Atty. Gen, Bettianne C. Hart, Asst. Dist. Atty., for Appellee. CARLEY, Justice.

After a bench trial, Appellant Cheryl Christian was found guilty of felony murder of her three-year old daughter. She was also found guilty on separate counts of cruelty to children and aggravated assault on the young victim.

The predicate felony for the murder conviction was cruelty to children, which offense, as alleged in the indictment, consisted of Appellant's act of striking her daughter in the abdomen with an unknown object. After entering judgments of conviction on its findings of guilt, the trial court imposed a life sentence for murder, and concurrent 20-year sentences for the other two crimes.

Subsequently, the trial court denied Appellant's motion for new trial, and she appeals.[*] 1. At the time of her death, the child weighed only 27 pounds. The medical examiner testified that, in his opinion, she died within an hour or so after being hit in the abdomen, and that the fatal blow was

not inflicted accidentally. During the relevant time period, Appellant was the only adult in the house with her son and daughter.

Her son testified that he overheard his mother threaten to whip his sister if she soiled her clothing again. Shortly thereafter, he heard his sister coughing and gagging. Appellant called 911, and the child was transported to the hospital where she was pronounced dead. Initially, Appellant admitted beating her daughter with a belt the preceding night, but she did not acknowledge any responsibility for the death.

After an autopsy showed that the victim had died from a blow to her abdomen, however, Appellant stated that she may have stepped on the child accidentally. When construed most strongly in support of the trial court's findings, the evidence is sufficient to authorize a rational trier of fact to find proof of Appellant's guilt of felony murder, cruelty to children and aggravated assault beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Because the separate cruelty to children and aggravated assault counts were based upon acts committed by Appellant on the day preceding the death of the victim, neither of those convictions merges into the felony murder count and, accordingly, separate sentences for those crimes were authorized.

2. Appellant filed a motion to dismiss, asserting a violation of her constitutional right to a speedy trial. The trial court denied the motion, and she enumerates that ruling as error. Appellant was arrested in May of 1998, shortly after the death of her daughter. She was not indicted until August of 2001, a delay of some 39 months.

The trial did not begin until June of 2003. Thus, 61 months elapsed between the arrest and trial. In examining an alleged denial of the constitutional right to a speedy trial, courts must engage in a balancing test with the following factors being considered: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of the right to a speedy trial; and (4) prejudice to the defendant.

Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). The existence of no one factor is either necessary or sufficient to sustain a speedy trial claim, and a trial court's findings of fact and its weighing of disputed facts will be afforded deference on appeal. [Cits.] *Williams v. State*, 277 Ga. 598, 599(1), 592 S.E.2d 848 (2004). Length of the delay.

In calculating the length of the delay, the constitutional right to a speedy trial attaches on the date of arrest or when formal charges are initiated, whichever is earlier. *Wimberly v. State*, 279 Ga. 65, 608 S.E.2d 625 (2005).

Here, that would be May of 1998, when Appellant was arrested. The delay of over five years before she was brought to trial "is so extraordinarily long as to be considered presumptively

prejudicial and to require the consideration of the remaining factors in the balancing test. [Cit.]" Williams v. State, supra at 599(1)(a), 592 S.E.2d 848. Reason for the delay.

The only reason the prosecution offered for the 39-month delay between Appellant's arrest and indictment was its inability to obtain the victim's medical records from the hospital. While the records may have been informative and helpful, the State did not show that, without them, obtaining an indictment was impossible or even difficult.

In fact, it appears that when the indictment eventually was returned against Appellant, the child's medical records still had not been turned over to the prosecution by the hospital. Moreover, the inaccessibility of the records did not account fully for the 39-month pre-indictment delay.

Thus, insofar as that portion of the 61-month period between Appellant's arrest and trial is concerned, "a review of the State's reasons for the delay reveals no valid explanation.... However, there is nothing evidencing 'that most serious abuse' A deliberate attempt to delay the trial in order to hamper the defense...." [Cit.] [Cit.]" Nelloms v. State, 274 Ga. 179, 180, 549 S.E.2d 381 (2001). "[I]f the delay attributable to the [S]tate's preparation of its case is not deliberate but is negligent, it is weighted as a 'relatively benign' factor against the [S]tate.

[Cits.]" Jackson v. State, 272 Ga. 782, 784, 534 S.E.2d 796 (2000). On the other hand, the 22-month delay between indictment and trial was attributable, at least in part, to Appellant, who sought a continuance on one or more occasions. These actions by the defense clearly contributed to the [6]1 month delay in bringing [her] to trial. "Thus, to the extent the reason for delay is attributable to the [S]tate, it is a relatively benign but definitely negative factor."

[Cit.] Nelloms v. State, supra. Assertion of the Right to Speedy Trial. "[D]elay often... work[s] to a defendant's advantage. [Cit.]" Perry v. Mitchell, 253 Ga. 593, 595, 322 S.E.2d 273 (1984). This consideration plays into the third factor, i.e., the assertion of the right to a speedy trial. This factor "'is entitled to strong evidentiary weight' against the defendant, (cit.)" [cit.], where, as here, [Appellant] filed no statutory demand for speedy trial pursuant to OCGA § 17-7-171 and did not raise [her] constitutional right to a speedy trial for the [6]1 months between [her] arrest and the filing of [her] motion to dismiss, in which [she] finally asserted the right.

This delay in asserting [her] right to a speedy trial must be weighted against [Appellant]. [Cit.] Nelloms v. State, supra at 181, 549 S.E.2d 381. Prejudice: Barker v. Wingo, supra, identifies three interests that the speedy trial right is designed to protect, "'the last being the most important: (a) to prevent oppressive pretrial incarceration; (b) to minimize anxiety and concern of the accused; and (c) to limit the possibility that the defense will be impaired.'

[Cit.]" Williams v. State, 279 Ga. 106, 109(1)(d), 610 S.E.2d 32 (2005). Appellant was free on bond for all but three months of the 61-month period, and she did not show that she was subjected to oppressive pre-trial incarceration. See Smith v. State, 275 Ga. 261, 263, 564 S.E.2d 441 (2002);

Jackson v. State, supra at 785, 534 S.E.2d 796. "As for the second prejudice factor, anxiety and concern of the accused, `it is always present to some extent, and thus absent some unusual showing is not likely to be determinative in defendant's favor.'

[Cits.]" Boseman v. State, 263 Ga. 730, 733(1)(d), 438 S.E.2d 626 (1994). Appellant did not make "any showing in the record that the delay caused [her] significant anxiety and concern beyond that generally experienced *25 by defendants in [her] situation. [Cits.]" Salahuddin v. State, 277 Ga. 561, 563(2), 592 S.E.2d 410 (2004). With regard to impairment of her defense, Appellant claims that, because of the delay, the tape of her 911 call, her daughter's medical records and two witnesses were unavailable.

However, she did not show how the tape or the records were material to her defense of the murder and related charges. Applying the necessity exception to the hearsay rule, the trial court admitted into evidence the statement of one of the missing witnesses. See Brannen v. State, 274 Ga. 454, 458, 553 S.E.2d 813 (2001) (prejudice resulting from missing defense witness "alleviated" by stipulation to admissibility of his statement).

Moreover, his statement was of minimal importance, since he neither directly exculpated Appellant nor directly inculpated anyone else for the acts which resulted in the child's injuries and death. Compare Hardeman v. State, 280 Ga.App. 168, 171(4), 633 S.E.2d 595 (2006) (testimony of deceased witness "material" and "went to the heart of the defense").

The other missing witness was Appellant's uncle, who had supervised her two children during the day on which the death occurred. However, she did not show that he was a material witness whose testimony was relevant to her defense and might have supported a different result in her bench trial. Balancing these factors, we conclude that although the State was negligent in failing to bring [A]ppellant to trial in a timely fashion, that consideration is outweighed by the facts that [A]ppellant suffered little actual prejudice to [her] defense, suffered no unduly oppressive pretrial incarceration and waited a significant amount of time before asserting [her] right to a speedy trial.

Hence, the trial court properly ruled that [she] was not unconstitutionally denied [her] speedy trial rights. Salahuddin v. State, supra at 563(2), 592 S.E.2d 410. Judgments affirmed. All the Justices concur. NOTES [*] The homicide occurred on May 16, 1998, and the other crimes were committed on the preceding day.

The grand jury indicted Appellant in August of 2001, and reindicted her on April 22, 2003. On July 14, 2003, the trial court entered the judgments of conviction and sentences on its findings of her guilt. Appellant filed a timely motion for new trial, which the trial court denied on November 10, 2005. Appellant filed a notice of appeal on November 21, 2005, and the case was docketed in this Court on June 22, 2006.

The appeal was submitted for decision on the briefs.

