

SUPREME COURT OF GEORGIA

McLean v. State

291 Ga. 873 (2012) · Decided November 5, 2012

SUMMARY

The Supreme Court of Georgia affirmed Michael Reginald McLean’s convictions for felony murder and related offenses arising from the shooting death of Perry Phillips during an attempted marijuana robbery. The court rejected challenges concerning sufficiency of the evidence, denial of severance, an alleged Bruton confrontation violation, jury instructions, and ineffective assistance of counsel.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice; Nahmias, Justice; All other Justices of the Supreme Court of Georgia
JURISDICTION	Georgia
DECIDED	November 5, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for felony murder, armed robbery, and aggravated assault following a joint jury trial with co-defendant Jermarae Herbert.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed deferentially to the jury's assessment of witness credibility and evidentiary conflicts. Denial of severance in a non-death-penalty murder case is reviewed for abuse of discretion. Unpreserved jury-instruction claims are reviewed for plain error under OCGA § 17-8-58. Ineffective-assistance claims require deficient performance and prejudice; factual findings and credibility determinations are accepted unless clearly erroneous, while legal principles are applied independently.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Georgia
PARTIES	Michael Reginald McLean v. State of Georgia

TOPICS

- criminal procedure
- evidence
- sixth amendment
- jury instructions
- ineffective assistance

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Constitutional law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support McLean's convictions.
2. Whether the trial court abused its discretion by denying McLean's motion to sever his trial from Herbert's.
3. Whether testimony about Herbert's statement that they threw the gun out violated McLean's Sixth Amendment confrontation rights under *Bruton v. United States*.
4. Whether the trial court committed plain error by failing to instruct the jury that a defendant must knowingly participate in each charged crime.
5. Whether trial counsel rendered ineffective assistance by failing to object to the omission of an equal-access instruction, an identification instruction, and an instruction that one defendant's conviction did not require conviction of the other.

HOLDINGS

1. The evidence was sufficient for the jury to find McLean guilty beyond a reasonable doubt of the crimes for which he was convicted; appellate review does not reweigh evidence or resolve witness-credibility conflicts.
2. The trial court did not abuse its discretion in denying severance because the joint trial involved only two defendants, substantially similar law and evidence, and McLean failed to show specific prejudice.
3. The detective's testimony about Herbert's statement did not violate McLean's confrontation rights under *Bruton* because the statement did not directly inculcate or identify McLean.
4. Any error in omitting the requested knowing-participation instruction did not constitute reversible plain error because the instructions as given covered criminal intent, the State's burden, parties to a crime, and mere presence, and there was no likelihood the omission affected the verdict.
5. McLean failed to establish ineffective assistance because counsel's performance was not deficient in failing to obtain an equal-access instruction, and any assumed deficiencies concerning identification and separate-defendant instructions did not prejudice the defense.

KEY QUOTATIONS

"When this Court reviews the sufficiency of the evidence, it does not re-weigh the evidence or resolve conflicts in witness testimony, but instead it defers to the jury's assessment of the weight and credibility of the evidence." (291 Ga. at 874)

"In any event, antagonistic defenses alone are not sufficient to mandate severance; McLean must also demonstrate harm from the failure to sever." (291 Ga. at 875)

"Bruton excludes only the statement of a nontestifying co-defendant that standing alone directly inculcates the defendant." (291 Ga. at 876)

“Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant’s substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the trial court proceedings.” (291 Ga. at 876-877)

“To meet the second prong of the required test, the defendant must show that there is a reasonable probability that, absent any unprofessional errors on counsel’s part, the result of his trial would have been different.” (291 Ga. at 877)

FACTUAL BACKGROUND

McLean and Jermarae Herbert traveled to Clayton County with two other men and obtained marijuana from Perry Phillips. After discussing a plan to rob Phillips, McLean handled a pistol that had been left in an apartment and then took it when he, Herbert, and another man drove to meet Phillips. When Phillips entered the vehicle and produced marijuana, McLean drew the pistol and fatally shot him. The men returned to the apartment, where Herbert stated that McLean had shot Phillips and McLean commented that Phillips had acted aggressively.

PROCEDURAL HISTORY

A Clayton County grand jury indicted McLean and three other defendants for malice murder, felony murder, armed robbery, and aggravated assault. McLean and Herbert were tried jointly; the jury acquitted both of malice murder but convicted both of the remaining charges, and McLean received a life sentence for felony murder with the remaining counts merging into that conviction. The trial court denied McLean's amended motion for new trial, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Herbert v. State, 288 Ga. 843 (708 SE2d 260) (2011)
- Greeson v. State, 287 Ga. 764, 765 (700 SE2d 344) (2010)
- Tolbert v. State, 282 Ga. 254, 256 (1) (647 SE2d 555) (2007)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- Butler v. State, 290 Ga. 412, 413 (2) (721 SE2d 876) (2012)
- Loren v. State, 268 Ga. 792, 795 (2) (493 SE2d 175) (1997)
- Krause v. State, 286 Ga. 745, 750 (5) (691 SE2d 211) (2010)
- Bruton v. United States, 391 U.S. 123 (1968)
- Nelms v. State, 285 Ga. 718, 721 (2)(b) (681 SE2d 141) (2009)
- Burns v. State, 280 Ga. 24, 27 (3) (622 SE2d 352) (2005)
- Ardis v. State, 290 Ga. 58, 60-62 (2) (718 SE2d 526) (2011)
- State v. Kelly, 290 Ga. 29, 33 (2)(a) (718 SE2d 232) (2011)
- Allen v. State, 290 Ga. 743, 745-746 (3) (723 SE2d 684) (2012)

- Strickland v. Washington, 466 U.S. 668 (1984)
- Smith v. Francis, 253 Ga. 782, 783-784 (1) (325 SE2d 362) (1985)
- Robinson v. State, 277 Ga. 75, 76 (586 SE2d 313) (2003)
- Stokes v. State, 281 Ga. 875, 877 (3) (644 SE2d 116) (2007)
- State v. Johnson, 280 Ga. 511, 513 (630 SE2d 377) (2006)
- Duvall v. State, 290 Ga. 475, 477 (2)(b) (722 SE2d 62) (2012)
- Weems v. State, 268 Ga. 515, 517 (5) (491 SE2d 325) (1997)
- Springs v. Seese, 274 Ga. 659, 662 (3) (558 SE2d 710) (2002)
- Lee v. State, 281 Ga. 776, 777 (2) (642 SE2d 835) (2007)
- Hightower v. State, 287 Ga. 586, 590 (4) (698 SE2d 312) (2010)
- Nicholson v. State, 265 Ga. 711, 713-714 (3) (462 SE2d 144) (1995)
- Malcolm v. State, 263 Ga. 369, 371-372 (4), (5) (434 SE2d 479) (1993)