

SUPREME COURT OF KENTUCKY

Lonnie Conyers v. Commonwealth of Kentucky; Roy Edward Tucker v. Commonwealth of Kentucky; Joseph Hardy v. Commonwealth of Kentucky

Conyers v. Commonwealth · No. 2015-SC-000655-MR; 2015-SC-000687-MR; 2016-SC-000340-MR · Decided October 24, 2017

SUMMARY

The Kentucky Supreme Court affirmed the convictions and sentences of Lonnie Conyers, Roy Edward Tucker, and Joseph Hardy following their joint jury trial for two counts of first-degree burglary. The court held that the evidence supported the first-degree burglary instructions, including the defendants' armed status and complicity, and that the trial court properly refused instructions on receiving stolen property as a lesser-included offense. The court also rejected claims concerning juror and witness misconduct, voluntary intoxication, and Conyers's persistent-felony-offender sentencing.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Hughes
JURISDICTION	Kentucky
DECIDED	October 24, 2017
DOCKET	2015-SC-000655-MR; 2015-SC-000687-MR; 2016-SC-000340-MR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Following a joint jury trial in Campbell Circuit Court, all three appellants were convicted of two counts of first-degree burglary and sentenced as first-degree persistent felony offenders to concurrent twenty-year terms. They appealed as a matter of right, and the Kentucky Supreme Court consolidated the appeals.
STANDARD OF REVIEW	Abuse of discretion for the denial of a mistrial, the refusal to give a voluntary-intoxication instruction, and an evidence-based lesser-offense instruction; de novo for purely legal questions concerning jury instructions and statutory interpretation.
PRECEDENTIAL VALUE	published

PARTIES

Lonnie Conyers, Roy Edward Tucker, Joseph Hardy v.
Commonwealth of Kentucky

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criminal procedure

jury instructions

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QUESTIONS PRESENTED

1. Whether the evidence supported first-degree burglary instructions where firearms stolen during the burglaries were later found in the defendants' vehicle.
2. Whether the evidence supported first-degree burglary convictions by complicity without proof that each alleged complicitor knew the principal was armed with a deadly weapon.
3. Whether circumstantial evidence, including possession of stolen property and evidence of a similar burglary, supported submission of the Turpen burglary to the jury.
4. Whether receiving stolen property was an included offense of first-degree burglary requiring a jury instruction.
5. Whether juror and witness misconduct during a recess required a mistrial.
6. Whether Joseph Hardy was entitled to a voluntary-intoxication instruction.
7. Whether Lonnie Conyers's prior felony conviction remained usable for first-degree PFO sentencing after a later statutory amendment would have made the underlying conduct a misdemeanor.

HOLDINGS

1. The evidence supported the first-degree burglary instructions because the defendants had ready access to firearms taken during the burglaries; the narrow exception for an inaccessible firearm did not apply.
2. The firearms found in the defendants' possession, except the starter's pistol, could reasonably be deemed deadly weapons without additional proof that a particular firearm had actually been fired or subjected to ballistics testing.
3. A complicitor who intends to promote or facilitate the basic offense and aids or encourages its commission may be convicted of the degree of the offense actually committed by the principal, even without proof that the complicitor knew the principal was armed.
4. The evidence was sufficient to submit the Turpen burglaries to the jury because possession of property recently stolen from a dwelling, together with the defendants' participation in a similar burglary shortly afterward, supported an inference of participation.
5. Receiving stolen property is not an included offense of burglary under KRS 505.020(2), so the trial court properly refused the requested instruction.

6. The trial court did not abuse its discretion by denying a mistrial because it promptly investigated the juror and witness contacts, remedied potentially tainted evidence, and the defendants failed to show a reasonable likelihood of prejudice.
7. Hardy was not entitled to a voluntary-intoxication instruction because the evidence did not reasonably support a finding that he was so intoxicated that he was unaware of what he was doing.
8. Conyers's 2004 felony marijuana-trafficking conviction remained a felony for purposes of first-degree PFO sentencing despite a later amendment that would have treated the conduct as a misdemeanor under current law.

KEY QUOTATIONS

“Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.” (22-23)

“In terms of their elements, therefore, the two crimes are utterly distinct.” (17)

“The trial court did not err or abuse its discretion in ultimately determining that none of the alleged incidences of juror or witness misconduct, considered singly or cumulatively, necessitated a mistrial.” (32)

FACTUAL BACKGROUND

Two residences in Melbourne, Kentucky, were burglarized on February 11, 2015. A neighbor observed and photographed three men removing property from one residence, and police stopped their vehicle shortly after it left the scene; stolen property and firearms from both residences were later found in the vehicle or on the defendants. During a recess after the first trial day, a witness interacted with jurors and later discussed aspects of his testimony with prosecution witnesses, but the trial court conducted an inquiry and excluded potentially tainted evidence.

PROCEDURAL HISTORY

The trial court denied motions for a mistrial based on juror and witness misconduct, refused to dismiss the first-degree burglary charges, and declined to instruct on receiving stolen property as a lesser-included offense. The court also denied Joseph Hardy's request for a voluntary-intoxication instruction and allowed Lonnie Conyers's prior felony conviction to support first-degree PFO sentencing. The Supreme Court of Kentucky affirmed all three judgments.

DISPOSITION

affirmed

CASES CITED

- Litton v. Commonwealth, 597 S.W.2d 616 (Ky. 1980)
- Colwell v. Commonwealth, 37 S.W.3d 721 (Ky. 2000)

- Wilson v. Commonwealth, 438 S.W.3d 345 (Ky. 2014)
- Hayes v. Commonwealth, 698 S.W.2d 827, 830 (Ky. 1985)
- Riley v. Commonwealth, 91 S.W.3d 560, 563 (Ky. 2002)
- Wilburn v. Commonwealth, 312 S.W.3d 321 (Ky. 2010)
- Johnson v. Commonwealth, 327 S.W.3d 501 (Ky. 2010)
- Smith v. Commonwealth, 370 S.W.3d 871, 877-78 (Ky. 2012)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- Jackson v. Commonwealth, 670 S.W.2d 828, 830 (Ky. 1984)
- Houston v. Commonwealth, 975 S.W.2d 925 (Ky. 1998)
- Martin v. Commonwealth, 409 S.W.3d 340 (Ky. 2013)
- Sargent v. Shaffer, 467 S.W.3d 198, 202-04 (Ky. 2015)
- Hudson v. Commonwealth, 202 S.W.3d 17, 20-21 (Ky. 2006)
- Slaven v. Commonwealth, 962 S.W.2d 845, 856 (Ky. 1997)
- Perry v. Commonwealth, 839 S.W.2d 268 (Ky. 1992)
- Hall v. Commonwealth, 337 S.W.3d 595, 606, 616-17 (Ky. 2011)
- Kiper v. Commonwealth, 399 S.W.3d 736 (Ky. 2012)
- Remmer v. United States, 347 U.S. 227 (1954)
- Sheppard v. Maxwell, 384 U.S. 333 (1966)
- United States v. Davis, 15 F.3d 1393, 1412 (7th Cir. 1994)
- Commonwealth v. Abnee, 375 S.W.3d 49, 55 (Ky. 2012)
- Smith v. Phillips, 455 U.S. 209, 215, 217 (1982)
- Meyer v. State, 80 P.3d 447, 453, 455 (Nev. 2003)
- United States v. Paneras, 222 F.3d 406, 411 (7th Cir. 2000)
- Dalby v. Cook, 434 S.W.2d 35 (Ky. 1968)
- Owings v. Webb's Ex'r, 304 Ky. 748, 202 S.W.2d 410, 412 (1947)
- Talbott v. Commonwealth, 968 S.W.2d 76, 86 (Ky. 1998)
- Oro-Jimenez v. Commonwealth, 412 S.W.3d 174, 180-81 (Ky. 2013)
- Woodard v. Commonwealth, 219 S.W.3d 723, 728-29 (Ky. 2007)
- Commonwealth v. Prater, 324 S.W.3d 393 (Ky. 2010)
- Roach v. Commonwealth, 313 S.W.3d 101, 113 (Ky. 2010)
- Fredline v. Commonwealth, 241 S.W.3d 793, 797 (Ky. 2007)
- Nichols v. Commonwealth, 142 S.W.3d 683, 688 (Ky. 2004)
- Payne v. Commonwealth, 656 S.W.2d 719 (Ky. 1983)
- Weaver v. Commonwealth, 298 S.W.3d 851, 855 (Ky. 2009)
- Rogers v. Commonwealth, 86 S.W.3d 29, 44 (Ky. 2002)
- Stanford v. Commonwealth, 793 S.W.2d 112 (Ky. 1990)
- Lloyd v. State, 587 S.E.2d 372 (Ga. App. 2003)

- Rogers v. Commonwealth, 285 S.W.3d 740, 750 (Ky. 2009)
- Rogers v. Commonwealth, 366 S.W.3d 446, 456 (Ky. 2012)

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