

WASHINGTON SUPREME COURT

State v. Wright, 165 Wash. 2d 783

203 P.3d 1027 (2009) · Decided March 26, 2009

SUMMARY

The Washington Supreme Court held that double jeopardy did not bar retrial of the defendants for second degree intentional murder after their second degree felony murder convictions were vacated. The convictions had been reversed because assault could not serve as the predicate felony under the applicable felony murder statute, rather than for insufficient evidence. The court also held that the juries’ general verdicts and failure to receive instructions on the intentional murder alternative did not constitute an express or implied acquittal of that alternative.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Madsen, J.; Alexander, C.J.; Bridge, J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Owens, J.; Sanders, J.
JURISDICTION	Washington
DECIDED	March 26, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	After the defendants' second degree felony-murder convictions were vacated because assault could not serve as the predicate felony, the trial courts dismissed the State's proposed retrial charges on double-jeopardy grounds. The Court of Appeals reversed and remanded for retrial. The Washington Supreme Court granted review and consolidated Wright's and Bryant's cases.
STANDARD OF REVIEW	De novo review of the constitutional double-jeopardy issue.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court opinion
PARTIES	Oliver Wright, Dennis Bryant v. State of Washington

TOPICS

- double jeopardy
- criminal procedure
- appellate procedure
- constitutional law
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether reversal and vacation of the defendants' second degree felony-murder convictions because assault was not a legally valid predicate felony constituted reversal for insufficient evidence or instead trial error permitting retrial.
2. Whether the defendants were impliedly acquitted of second degree intentional murder when their juries were instructed only on the felony-murder alternative and returned general verdicts.
3. Whether jeopardy terminated when the juries were discharged without returning express verdicts on the intentional-murder alternative and without the defendants' consent.
4. Whether the State could retry the defendants for second degree murder under the intentional-murder alternative.

HOLDINGS

1. The convictions were reversed because the State proceeded under an invalid legal theory or nonexistent crime, not because the evidence was insufficient. Retrial therefore was not barred by double jeopardy.
2. The defendants were not impliedly acquitted of second degree intentional murder because the juries were not instructed on that alternative and therefore had no opportunity to resolve the defendants' factual guilt or innocence on it.
3. The discharge of the juries without an express verdict on the intentional-murder alternative did not terminate jeopardy because the defendants were tried for one offense, second degree murder, and received a valid general verdict on that offense under the alternative-means doctrine.
4. The State may retry the defendants for second degree murder under the intentional-murder alternative. The defendants' continuing jeopardy on the single offense of second degree murder encompasses any valid alternative means of committing that offense.

KEY QUOTATIONS

“Applying well-established principles applicable to alternative means offenses, we hold the State’s failure to submit a jury instruction on intentional murder has no effect on its ability to retry the defendants for that charge.” (at 783)

“The State’s failure to instruct the jury on the intentional murder alternative is of no consequence for double jeopardy purposes.” (at 810)

FACTUAL BACKGROUND

Oliver Wright shot Aisa Cameron at close range during a drug transaction after an argument. Dennis Bryant shot Derek Burfekt and Jacque Burns in a parking lot following the Seafair parade; Burns died. In both cases, the State charged second degree murder under intentional-murder and assault-based felony-murder alternatives, but the juries received instructions only on the felony-murder alternative and returned general guilty verdicts.

PROCEDURAL HISTORY

The defendants were charged with one count of second degree murder under alternative theories of intentional murder and felony murder predicated on assault. Their juries were instructed only on felony murder and returned general guilty verdicts. After the Washington Supreme Court's decisions in *Andress* and *Hinton* invalidated assault-based second degree felony murder, the convictions were vacated. The trial courts dismissed the State's proposed retrial charges for intentional murder, but the Court of Appeals reversed; the Supreme Court affirmed that decision.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Court of Appeals' decisions remanding the cases for retrial were affirmed.

CASES CITED

- *In re Personal Restraint of Andress*, 147 Wn.2d 602, 56 P.3d 981 (2002)
- *In re Personal Restraint of Hinton*, 152 Wn.2d 853, 100 P.3d 801 (2004)
- *State v. Ervin*, 158 Wn.2d 746, 147 P.3d 567 (2006)
- *In re Personal Restraint of Davis*, 142 Wn.2d 165, 12 P.3d 603 (2000)
- *State v. Gocken*, 127 Wn.2d 95, 896 P.2d 1267 (1995)
- *North Carolina v. Pearce*, 395 U.S. 711 (1969)
- *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977)
- *Arizona v. Washington*, 434 U.S. 497 (1978)
- *Fong Foo v. United States*, 369 U.S. 141 (1962)
- *Justices of Boston Municipal Court v. Lydon*, 466 U.S. 294 (1984)
- *Tibbs v. Florida*, 457 U.S. 31 (1982)
- *State v. Corrado*, 81 Wn. App. 640, 915 P.2d 1121 (1996)
- *Burks v. United States*, 437 U.S. 1 (1978)
- *United States v. Tateo*, 377 U.S. 463 (1964)
- *Wade v. Hunter*, 336 U.S. 684 (1949)
- *Gori v. United States*, 367 U.S. 364 (1961)
- *Montana v. Hall*, 481 U.S. 400 (1987)
- *State v. Gamble*, 137 Wn. App. 892, 155 P.3d 962 (2007)
- *Parker v. Lockhart*, 797 F. Supp. 718 (E.D. Ark. 1992), rev'd on other grounds, 64 F.3d 1178 (8th Cir. 1995)
- *Green v. United States*, 355 U.S. 184 (1957)
- *Price v. Georgia*, 398 U.S. 323 (1970)
- *United States v. Scott*, 437 U.S. 82 (1978)

- United States v. Powell, 469 U.S. 57 (1984)
- Selvester v. United States, 170 U.S. 262 (1898)
- State v. Davis, 190 Wash. 164, 67 P.2d 894 (1937)
- Commonwealth v. Carlino, 449 Mass. 71, 865 N.E.2d 767 (2007)
- State v. Wade, 284 Kan. 527, 161 P.3d 704 (2007)
- State v. Pexa, 574 N.W.2d 344 (Iowa 1998)
- United States v. Ham, 58 F.3d 78 (4th Cir. 1995)
- Schiro v. State, 533 N.E.2d 1201 (Ind. 1989)
- United States ex rel. Jackson v. Follette, 462 F.2d 1041 (2d Cir. 1972)
- People v. Jackson, 20 N.Y.2d 440, 231 N.E.2d 722 (1967)
- United States v. Garcia, 938 F.2d 12 (2d Cir. 1991)
- Cichos v. Indiana, 385 U.S. 76 (1966)
- State v. Womac, 160 Wn.2d 643, 160 P.3d 40 (2007)
- State v. Ortega-Martinez, 124 Wn.2d 702, 881 P.2d 231 (1994)
- State v. Kitchen, 110 Wn.2d 403, 756 P.2d 105 (1988)
- United States v. Ewell, 383 U.S. 116 (1966)
- Ohio v. Johnson, 467 U.S. 493 (1984)
- United States v. DiFrancesco, 449 U.S. 117 (1980)
- Sattazahn v. Pennsylvania, 537 U.S. 101 (2003)
- Terry v. Potter, 111 F.3d 454 (6th Cir. 1997)
- State v. Ramos, 163 Wn.2d 654, 184 P.3d 1256 (2008)
- State v. Daniels, 160 Wn.2d 256, 156 P.3d 905 (2007)
- State v. Anderson, 96 Wn.2d 739, 638 P.2d 1205 (1982)
- State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980)
- State v. Joy, 121 Wn.2d 333, 851 P.2d 654 (1993)
- State v. Coleman, 159 Wn.2d 509, 150 P.3d 1126 (2007)
- Griffin v. United States, 502 U.S. 46 (1991)
- Saylor v. Cornelius, 845 F.2d 1401 (6th Cir. 1988)
- United States v. Davis, 873 F.2d 900 (6th Cir. 1989)
- Crist v. Bretz, 437 U.S. 28 (1978)
- Serfass v. United States, 420 U.S. 377 (1975)
- Downum v. United States, 372 U.S. 734 (1963)
- United States v. Jorn, 400 U.S. 470 (1971)
- Illinois v. Somerville, 410 U.S. 458 (1973)
- Oregon v. Kennedy, 456 U.S. 667 (1982)
- Brock v. North Carolina, 344 U.S. 424 (1953)
- Palko v. Connecticut, 302 U.S. 319 (1937)

- State v. Witt, 572 S.W.2d 913 (Tenn. 1978)

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