

SUPREME COURT OF GEORGIA

McDonald v. State

296 Ga. 643 (2015) · No. S14A1342 · Decided March 2, 2015

SUMMARY

The Supreme Court of Georgia reviewed Steve McDonald's convictions arising from the murder, robbery, and related offenses involving Kim Condry. The court rejected challenges concerning sufficiency of the evidence, ineffective assistance of counsel, self-representation, and jury composition, but held that the trial court erred in merging the offenses for sentencing. The judgment was affirmed in part, vacated in part, and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice
JURISDICTION	Georgia
DECIDED	March 2, 2015
DOCKET	S14A1342
DISPOSITION	vacated
PROCEDURAL POSTURE	Direct appeal from the denial of an amended motion for new trial following convictions for malice murder and related offenses.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether, viewing the evidence in the light most favorable to the verdict, a rational trier of fact could find guilt beyond a reasonable doubt. Ineffective-assistance claims are reviewed under the deficient-performance and prejudice requirements of Strickland v. Washington. Unpreserved jury-array challenges are waived on appeal. Merger issues may be considered sua sponte, and the required-evidence test governs merger as a matter of fact.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Steve McDonald v. The State

TOPICS

- criminal procedure
- ineffective assistance
- right to counsel
- jury selection
- sentencing

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

constitutional law

sentencing and merger

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support McDonald's convictions when the State's principal narrative witness was an accomplice.
2. Whether trial counsel rendered ineffective assistance by failing to prepare adequately, challenge venue, seek severance or bifurcation of the felon-in-possession count, request a Jackson-Denno hearing, challenge the jury panel, or suppress physical evidence.
3. Whether the trial court erred by refusing or failing to permit McDonald to represent himself.
4. Whether McDonald waived his challenge to the composition of the jury pool by failing to raise it at trial.
5. Whether the trial court correctly merged or vacated the various felony-murder, armed-robbery, false-imprisonment, and theft-by-taking verdicts for sentencing.

HOLDINGS

1. The evidence was sufficient to support McDonald's convictions because Gibson's accomplice testimony was corroborated by independent evidence connecting McDonald to the crimes, including phone records, physical evidence, witness testimony, his statements to police, possession of the victim's necklace, and flight.
2. McDonald failed to establish ineffective assistance because he did not show deficient performance and resulting prejudice as to the asserted failures of counsel.
3. McDonald could not obtain appellate relief based on the self-representation request because he abandoned that request before voir dire and confirmed that he wanted counsel to represent him.
4. McDonald's challenge to the composition of the jury array was waived because he did not raise it at trial.
5. The felony-murder verdicts were vacated by operation of law rather than merged into the malice-murder conviction; the armed-robbery, false-imprisonment, and theft-by-taking verdicts did not merge into malice murder; and the theft-by-taking verdict merged into the armed-robbery verdict because both counts were based on the taking of the victim's necklace and pendant.

KEY QUOTATIONS

“to corroborate an accomplice’s testimony, State must adduce “some independent evidence that the defendant himself was a participant in the crimes”” (at 646)

“An unequivocal assertion of the right to represent oneself, made prior to trial, should be followed by a hearing to ensure that the defendant knowingly and intelligently waives the right to counsel and understands the disadvantages of self-representation.” (at 653)

“theft by taking does not require proof of any facts separate from those required for armed robbery.” (at 655)

FACTUAL BACKGROUND

McDonald and Carol Sue Gibson planned to rob a drug dealer, abducted Kim Condry, and held him bound and gagged in a motel room. After learning that people might be looking for Condry, McDonald and Gibson transported him to a bridge at the Georgia-Florida line, where Gibson shot him and the pair threw his body into the Chattahoochee River. Physical evidence, phone records, witness testimony, McDonald's possession of a necklace belonging to the victim, his admissions, and his flight corroborated Gibson's testimony and connected McDonald to the crimes.

PROCEDURAL HISTORY

McDonald was convicted after a June 17-20, 2002 jury trial and received a life sentence for malice murder plus consecutive five-year sentences for firearm-possession offenses. The trial court purported to merge the felony-murder, armed-robbery, false-imprisonment, and theft-by-taking verdicts into the malice-murder conviction. After two grants of an out-of-time appeal, McDonald filed a motion for new trial in 2006; following amendments and an August 2013 hearing, the motion was denied on February 3, 2014. The Supreme Court of Georgia affirmed the convictions in substance but vacated the sentencing order and remanded for proper merger and resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must vacate the existing sentencing order, recognize that the felony-murder verdicts were vacated by operation of law, merge the theft-by-taking verdict into the armed-robbery verdict, and impose lawful sentences on the remaining armed-robbery and false-imprisonment verdicts.

CASES CITED

- Jackson v. Virginia, 443 U.S. 307 (1979)
- Crawford v. State, 294 Ga. 898, 901 (1), 757 S.E.2d 102 (2014)
- Strickland v. Washington, 466 U.S. 668, 695 (1984)
- Wesley v. State, 286 Ga. 355 (3), 689 S.E.2d 280 (2010)
- Romer v. State, 293 Ga. 339, 344 (3), 745 S.E.2d 637 (2013)
- Green v. State, 291 Ga. 579 (2), 731 S.E.2d 359 (2012)
- Tankersley v. State, 261 Ga. 318 (8), 404 S.E.2d 564 (1991)
- Sharpe v. State, 272 Ga. 684 (5), 531 S.E.2d 84 (2000)
- Cotton v. State, 279 Ga. 358 (4), 613 S.E.2d 628 (2005)
- Norton v. State, 263 Ga. 448 (2), 435 S.E.2d 30 (1993)
- Jackson v. Denno, 378 U.S. 368 (1964)
- Thaxton v. State, 260 Ga. 141, 142 (2), 390 S.E.2d 841 (1990)
- Rosser v. State, 284 Ga. 335, 337 (3), 667 S.E.2d 62 (2008)
- Hulett v. State, 296 Ga. 49 (2), 766 S.E.2d 1 (2014)

- Grissom v. State, No. S14A1431, 2015 WL 240477, at *3 (Ga. Jan. 20, 2015)
- Wells v. State, 294 Ga. App. 277, 280 (1) (b), 668 S.E.2d 881 (2008)

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