

SUPREME COURT OF GEORGIA

Jones v. State

292 Ga. 656 (2013) · Decided March 25, 2013

SUMMARY

The Georgia Supreme Court reversed Tchywaskie Lamar Jones’s convictions for aggravated assault and violating the Georgia Street Gang Terrorism and Prevention Act. The court held that the evidence was insufficient to establish Jones’s association with the Southside Bloods or that the assault furthered the gang’s interests, and that the trial court failed to provide an adequate curative response to improper prosecutorial comments about an unproven prior gang shooting. The court also upheld the denial of Jones’s motion to suppress evidence obtained through a search warrant.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Blackwell, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	March 25, 2013
DISPOSITION	reversed
PROCEDURAL POSTURE	Jones appealed his Dougherty County jury convictions for aggravated assault and violating the Georgia Street Gang Terrorism and Prevention Act. He challenged the sufficiency of the evidence, the prosecutor's closing argument, and the denial of his motion to suppress.
STANDARD OF REVIEW	For sufficiency of the evidence, the court viewed the evidence in the light most favorable to the verdict and asked whether any rational trier of fact could find guilt beyond a reasonable doubt under Jackson v. Virginia. For the warrant challenge, the court reviewed probable cause under the totality-of-the-circumstances test. It reviewed the alleged false statements and omissions by deleting false material, adding omitted truthful material, and reexamining the affidavit for probable cause. The court also considered whether the trial court's failure to provide a curative instruction under OCGA § 17-8-75 was harmless.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tchywaskie Lamar Jones v. State

TOPICS

suppression of evidence

probable cause

warrant requirement

criminal procedure

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate law

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain Jones's aggravated assault conviction as a party to the crime under transferred intent principles.
2. Whether the evidence was sufficient to sustain Jones's conviction under the Georgia Street Gang Terrorism and Prevention Act.
3. Whether the trial court complied with OCGA § 17-8-75 after the prosecutor referred during closing argument to Jones's alleged involvement in a prior shooting that was not supported by evidence.
4. Whether the search warrant affidavit, after correction for alleged false statements and omissions, established probable cause to search the residence and vehicles.
5. Whether Jones's statement acknowledging ownership of the pistol was inadmissible as fruit of an unlawful search or arrest.

HOLDINGS

1. The evidence was legally sufficient to sustain Jones's aggravated assault conviction because a rational jury could find that he shared a common criminal intent with the participants in the gunfight and was a party to the aggravated assault against the unintended victim under transferred intent principles.
2. The evidence was insufficient to prove that Jones was associated with the Southside Bloods or that his aggravated assault was intended to further the interests of that gang; therefore, his Street Gang Act conviction had to be reversed.
3. The trial court violated OCGA § 17-8-75 by failing to rebuke the prosecutor and provide a specific curative instruction after the prosecutor twice argued, without evidentiary support, that Jones had been involved in a prior gang shooting at Henderson Gym. The general instruction that opening statements and closing arguments are not evidence was inadequate, and the error was not harmless.
4. The search warrant was supported by probable cause even after the affidavit was corrected for conceded false statements and alleged omissions. The trial court therefore properly denied the motion to suppress.

KEY QUOTATIONS

“Every person concerned in the commission of a crime is a party thereto and may be charged with and convicted of commission of the crime.” (658)

“We conclude that the general instruction given by the trial court was an inadequate curative measure and did not serve “to remove the improper impression from [the jurors’] minds,” as required by OCGA § 17-8-75.” (662)

FACTUAL BACKGROUND

After an earlier altercation at a crowded public pool, Jones arrived with several others who intended to fight men associated with the incident. A gunfight followed between Jerry Harris and Jones's group, and an innocent bystander was shot by Harris. Evidence indicated that Jones owned a .22-caliber pistol and that a shell casing found at the scene probably came from it, although the proof that Jones fired the weapon came principally from a prior inconsistent statement by a witness. The State presented insufficient evidence that Jones was associated with the Southside Bloods or that the aggravated assault furthered that gang's interests, while the prosecutor improperly argued during closing that Jones had been involved in an earlier gang shooting at Henderson Gym.

PROCEDURAL HISTORY

A Dougherty County jury convicted Jones of aggravated assault and a Street Gang Act violation arising from a shooting at a public pool. The trial court denied Jones's motion to suppress evidence obtained under a search warrant and denied his mistrial and curative-instruction requests concerning an improper closing argument. The Supreme Court of Georgia reversed the judgment, holding that the evidence was insufficient for the Street Gang Act conviction and that the trial court failed to comply with OCGA § 17-8-75 regarding the prosecutor's unsupported argument; it rejected the suppression challenge.

DISPOSITION

reversed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307 (1979)
- Perkinson v. State, 273 Ga. 814, 816 (546 S.E.2d 501) (2001)
- Brown v. State, 291 Ga. 887, 888 (1) (734 S.E.2d 41) (2012)
- Pruitt v. State, 282 Ga. 30, 32 (1) (644 S.E.2d 837) (2007)
- Eckman v. State, 274 Ga. 63, 65 (1) (548 S.E.2d 310) (2001)
- Jordan v. State, 272 Ga. 395, 396 (1) (530 S.E.2d 192) (2000)
- Emmanuel v. State, 300 Ga. App. 378, 380 (1) (685 S.E.2d 361) (2009)
- Hendricks v. State, 290 Ga. 238, 240 (1) (719 S.E.2d 466) (2011)
- Smith v. State, 279 Ga. 423 (614 S.E.2d 65) (2005)
- Perry v. State, 276 Ga. 836, 837 (1) (585 S.E.2d 614) (2003)
- Rodriguez v. State, 284 Ga. 803, 806-807 (1) (671 S.E.2d 497) (2009)
- Rodriguez v. State, 284 Ga. 803, 810 (4) (671 S.E.2d 497) (2009)
- Alexander v. State, 270 Ga. 346, 350 (2) (509 S.E.2d 56) (1998)
- Hartry v. State, 270 Ga. 596, 599 (2) (512 S.E.2d 251) (1999)
- Arrington v. State, 286 Ga. 335, 346 (15)(a) (687 S.E.2d 438) (2009)
- Walker v. State, 281 Ga. 521, 524 (5) (640 S.E.2d 274) (2007)
- Boring v. State, 289 Ga. 429, 435 (3) (711 S.E.2d 634) (2011)

- Glenn v. State, 288 Ga. 462, 465 (2)(b) (704 S.E.2d 794) (2010)
- Illinois v. Gates, 462 U.S. 213 (1983)
- Bryant v. State, 288 Ga. 876, 892 (13)(a) (708 S.E.2d 362) (2011)
- State v. Palmer, 285 Ga. 75, 78 (673 S.E.2d 237) (2009)
- Herrera v. State, 288 Ga. 231, 233 (2) (702 S.E.2d 854) (2010)
- Davis v. State, 266 Ga. 212, 213 (465 S.E.2d 438) (1996)
- Burgeson v. State, 267 Ga. 102, 105 (3)(a) (475 S.E.2d 580) (1996)
- Vega v. State, 285 Ga. App. 405, 406 (1) (646 S.E.2d 501) (2007)
- Glenn v. State, 279 Ga. 277, 277-278 (612 S.E.2d 478) (2005)
- Hoffler v. State, 292 Ga. 537 (3) (739 S.E.2d 362) (2013)
- Jenkins v. State, 284 Ga. 642, 643 (1) (670 S.E.2d 425) (2008)
- Watts v. State, 274 Ga. 373, 375 (2) (552 S.E.2d 823) (2001)