

SUPREME COURT OF GEORGIA

Sapp v. State

290 Ga. 247 (2011) · Decided November 21, 2011

SUMMARY

The Georgia Supreme Court affirmed Raymond Trey Sapp’s convictions for felony murder and possession of a firearm during the commission of a crime, but vacated the separate conviction and sentence for criminal attempt to possess cocaine because the underlying felony could not support a separate sentence. The court also held that the omission of a specific proximate-cause instruction did not constitute plain error under the circumstances.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines; All Justices
JURISDICTION	Georgia
DECIDED	November 21, 2011
DISPOSITION	vacated
PROCEDURAL POSTURE	Sapp appealed convictions for felony murder, criminal attempt to possess cocaine, and possession of a firearm during the commission of a crime, challenging the sufficiency of the evidence, the sentence imposed for the underlying felony, and the failure to give a proximate-cause jury instruction.
STANDARD OF REVIEW	The sufficiency of the evidence was reviewed under whether any rational trier of fact could find guilt beyond a reasonable doubt. The unpreserved jury-instruction claim was reviewed for plain error under OCGA § 17-8-58 and State v. Kelly.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Raymond Trey Sapp v. State

TOPICS

- criminal procedure
- jury instructions
- preservation of error
- appellate procedure
- sentencing

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Sapp's convictions for felony murder, criminal attempt to possess cocaine, and possession of a firearm during the commission of a crime.
2. Whether Sapp could be separately sentenced for felony murder and the underlying felony of criminal attempt to possess cocaine.
3. Whether the trial court's failure to give a specific proximate-cause instruction for felony murder constituted plain error despite Sapp's failure to make a specific objection before the jury retired.

HOLDINGS

1. The evidence was sufficient to enable a rational trier of fact to find Sapp guilty beyond a reasonable doubt of all three offenses.
2. A defendant may not be separately sentenced for felony murder and the underlying felony when convicted of both; the separate judgment of conviction and sentence for criminal attempt to possess cocaine must be vacated.
3. The omission of an additional specific proximate-cause instruction did not constitute plain error because, even assuming such an instruction was warranted, the alleged error was not clear or obvious in light of the instructions given as a whole.

KEY QUOTATIONS

“First, there must be an error or defect — some sort of “[deviation from a legal rule]” — that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. 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.” Fourth and finally, if the above three prongs are satisfied, the [appellate court] has the discretion to remedy the error — discretion which ought to be exercised only if the error “ ‘seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’ ”” (290 Ga. at 250)

“Jury instructions are read and considered as a whole in determining whether there is error. [Cit.]” (290 Ga. at 251)

“The felony must have a legal relationship to the homicide, and be at least concurrent with it in part, and be a part of it in an actual and an [sic] material sense.” (290 Ga. at 251)

FACTUAL BACKGROUND

Sapp and Chance met the victim, Simpson Tyrone Cates, at a rural location where drugs were sold from vehicles. During a later arranged cocaine purchase, Chance shot Cates at close range through the open windows of the two vehicles, while Sapp was seated in the passenger seat and claimed the shooting was a surprise. Physical evidence

included blood on the interior of Cates's driver-side window and DNA from Cates on a bloodstain on Chance's shirt.

PROCEDURAL HISTORY

A Burke County grand jury first indicted Sapp and Christopher Derek Chance on February 5, 2009, and re-indicted them on March 11, 2010. Sapp was tried alone from March 23 through March 27, 2010. The jury acquitted him of malice murder but convicted him of felony murder based on criminal attempt to possess cocaine, possession of a firearm during the commission of a crime, and criminal attempt to possess cocaine. The trial court imposed a life sentence for felony murder, five consecutive years for firearm possession, and five concurrent years for attempted cocaine possession. The Supreme Court of Georgia affirmed in part and vacated the separate conviction and sentence for the underlying attempted-possession offense.

DISPOSITION

vacated

CASES CITED

- Jackson v. Virginia, 443 U.S. 307 (1979)
- Bolston v. State, 282 Ga. 400, 401 (2) (2007)
- Thomas v. State, 256 Ga. 176, 177 (3) (1986)
- Nix v. State, 280 Ga. 141, 142 (2) (2006)
- Parks v. State, 248 Ga. App. 405, 406 (2) (2001)
- Adams v. State, 234 Ga. App. 696, 697 (2) (1998)
- State v. Kelly, 290 Ga. 29, 31, 33-34 (2011)
- Roper v. State, 281 Ga. 878, 880 (2) (2007)
- White v. State, 281 Ga. 276, 280 (4) (2006)
- Glass v. State, 289 Ga. 542, 545-546 (2), (3) (2011)
- State v. Jackson, 287 Ga. 646 (2010)

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