

SUPREME COURT OF FLORIDA

McLean v. State

29 So. 3d 1045 (Fla. 2010) · No. SC07-2297 · Decided February 11, 2010

SUMMARY

The Supreme Court of Florida affirmed Derrick McLean's convictions and death sentence for first-degree felony murder and related offenses arising from a robbery and shooting. The court rejected challenges to pretrial identification procedures, an in-camera portion of a Nelson hearing, the jury instruction on the avoid-arrest aggravator, and the proportionality of the death sentence. The court also independently reviewed the evidence and found it sufficient to support the felony-murder conviction.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Pariente; Lewis; Canady; Polston; Labarga; Perry; Quince
JURISDICTION	Florida
DECIDED	February 11, 2010
DOCKET	SC07-2297
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a trial-court judgment convicting McLean of first-degree murder and other offenses and imposing a sentence of death.
STANDARD OF REVIEW	The court reviewed the denial of the motion to suppress and the challenged jury instruction for legal error, reviewed the proportionality of the death sentence under the totality of the circumstances, and independently reviewed the record for competent, substantial evidence supporting the murder conviction.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Florida.
PARTIES	Derrick McLean v. State of Florida

TOPICS

- criminal procedure
- right to counsel
- sentencing
- appellate procedure
- constitutional law

PRACTICE AREAS

- criminal law
- capital sentencing
- criminal procedure
- appellate procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether photographic and live lineup identifications obtained before charges were filed violated McLean's right to counsel.
2. Whether the trial court erred by conducting part of a Nelson hearing in camera and outside McLean's presence.
3. Whether the trial court erred by instructing the jury on the avoid-arrest aggravating circumstance even though the trial court ultimately rejected that aggravator.
4. Whether McLean's death sentence was disproportionate.
5. Whether competent, substantial evidence supported McLean's first-degree felony murder conviction.

HOLDINGS

1. Photographic and live lineups conducted before charges were filed were not critical stages of the proceedings, so McLean had no right to counsel at those lineups.
2. The trial court did not err by conducting part of the Nelson hearing outside McLean's presence because McLean was not entitled to a Nelson hearing on a disagreement concerning counsel's trial strategy rather than a formal claim of incompetence.
3. The trial court properly instructed the jury on the avoid-arrest aggravating circumstance because competent, substantial evidence supported submitting the aggravator to the jury, even though the trial court later declined to find that aggravator.
4. McLean's death sentence was proportionate under Florida's totality-of-the-circumstances review.
5. Competent, substantial evidence supported McLean's first-degree felony murder conviction.

KEY QUOTATIONS

"When the victim is not a law enforcement officer, the evidence must demonstrate beyond a reasonable doubt that 'the sole or dominant motive for killing was to eliminate a witness.'" (29 So. 3d at 1051)

"Proportionality review 'is not a comparison between the number of aggravating and mitigating circumstances.'" (29 So. 3d at 1052)

FACTUAL BACKGROUND

McLean and two accomplices entered the apartment of fifteen-year-old Jahvon Thompson to commit a robbery. During the robbery, McLean shot neighbor Theothlus Lewis and fired several shots at Thompson, three of which were fatal. McLean fled with the accomplices, and police later recovered physical evidence, including DNA-bearing items and a handgun consistent with the murder weapon, near the crashed getaway car. A surviving victim identified McLean in photographic and live lineups and at trial, and the accomplices testified against him pursuant to plea agreements.

PROCEDURAL HISTORY

McLean was convicted of first-degree felony murder, attempted home invasion robbery with a firearm, attempted first-degree murder, kidnapping with intent to commit a felony with a firearm, and attempted robbery with a firearm. Following a penalty-phase proceeding and Spencer hearing, the trial court imposed a death sentence after finding three aggravating circumstances and several mitigating circumstances. The Supreme Court of Florida reviewed the conviction and sentence on direct appeal and affirmed both.

DISPOSITION

affirmed

CASES CITED

- Ibar v. State, 938 So. 2d 451, 469-70 (Fla. 2006)
- Morrison v. State, 818 So. 2d 432, 440, 442 (Fla. 2002)
- Sexton v. State, 775 So. 2d 923, 931 (Fla. 2000)
- Aguirre-Jarquin v. State, 9 So. 3d 593, 607 (Fla. 2009)
- Bevel v. State, 983 So. 2d 505, 518 (Fla. 2008)
- Buzia v. State, 926 So. 2d 1203, 1209 (Fla. 2006)
- Hoskins v. State, 965 So. 2d 1, 19 (Fla. 2007)
- Farina v. State, 801 So. 2d 44, 54 (Fla. 2001)
- Thompson v. State, 648 So. 2d 692, 695 (Fla. 1994)
- Davis v. State, 928 So. 2d 1089, 1132 (Fla. 2006)
- Pace v. State, 854 So. 2d 167, 181 (Fla. 2003)
- Bowden v. State, 588 So. 2d 225, 231 (Fla. 1991)
- Crook v. State, 908 So. 2d 350, 356 (Fla. 2005)
- Urbin v. State, 714 So. 2d 411, 416 (Fla. 1998)
- Davis v. State, 859 So. 2d 465, 480 (Fla. 2003)
- Hayward v. State, 24 So. 3d 17 (Fla. 2009)
- LaMarca v. State, 785 So. 2d 1209 (Fla. 2001)
- Shellito v. State, 701 So. 2d 837 (Fla. 1997)
- Pope v. State, 679 So. 2d 710 (Fla. 1996)
- Heath v. State, 648 So. 2d 660 (Fla. 1994)
- Delgado v. State, 948 So. 2d 681, 689 (Fla. 2006)
- Spencer v. State, 691 So. 2d 1062 (Fla. 1996)
- Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- Bryant v. State, 901 So. 2d 810, 823 (Fla. 2005)

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