

SUPREME COURT OF GEORGIA

Grier v. State; Lucear v. State, 275 Ga. 430

569 S.E.2d 837 (2002) · No. Nos. S02A0622, S02A0623 · Decided September 16, 2002

SUMMARY

The Supreme Court of Georgia held that retrial was not barred by double jeopardy after the defendants' convictions were set aside because the State failed to prove venue. The court concluded that venue is a jurisdictional fact rather than an element of the offense, and that the trial court's lack of jurisdiction permitted retrial under OCGA § 16-1-8(d)(1).

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice
JURISDICTION	Georgia
DECIDED	September 16, 2002
DOCKET	Nos. S02A0622, S02A0623
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed the denial of their pleas of former jeopardy after the trial court granted them new trials because the State failed to prove venue in their first trial.
STANDARD OF REVIEW	The Supreme Court reviewed the trial court's denial of the pleas of former jeopardy and the application of constitutional and statutory double-jeopardy protections.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Grier, Lucear v. The State

TOPICS

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

PRACTICE AREAS

- criminal law
- criminal procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether retrial after the defendants' convictions were set aside for the State's failure to prove venue violated the Double Jeopardy Clauses of the United States and Georgia Constitutions.
2. Whether OCGA § 16-1-8(d)(2), or the statutory protections against retrial in OCGA § 16-1-8, barred retrial when the State failed to prove venue.

HOLDINGS

1. Failure to prove venue does not bar retrial under the constitutional prohibitions against double jeopardy. Venue is a jurisdictional fact, not an element of the offense, and reversal based on failure to establish venue is not a reversal for insufficient evidence within the rule of *Burks v. United States*.
2. OCGA § 16-1-8(d)(1) permits retrial because the former prosecution was before a court that lacked jurisdiction over the crimes when venue was not established. The statutory retrial bar in subsection (d) (2) did not prevent retrial because subsection (d) permits retrial if either listed circumstance exists.

KEY QUOTATIONS

"Reversal due to improper venue is not a resolution of some or all of the elements of the offense charged."
(275 Ga. at 431)

"Thus, the State's failure to establish venue rendered the judgments void because the court lacked jurisdiction over the crimes, and retrial is permitted under OCGA § 16-1-8(d)(1)." (275 Ga. at 432)

FACTUAL BACKGROUND

Grier and Lucear were tried and convicted of felony murder and aggravated assault charges arising from the death of Deon Dorsey. The trial court later granted both defendants new trials after determining that the State had failed to prove venue beyond a reasonable doubt. The defendants argued that retrial was barred because the failure to prove venue constituted insufficient evidence and because OCGA § 16-1-8(d)(2) prohibited another prosecution.

PROCEDURAL HISTORY

Grier and Lucear were indicted in Fulton County for felony murder and aggravated assault and were convicted after a 1998 jury trial. The trial court granted each defendant a new trial based on the State's failure to establish venue. The defendants then filed pleas of former jeopardy, which the trial court denied on June 22, 2001. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- *Jones v. State*, 272 Ga. 900, 537 S.E.2d 80 (2000)
- *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)
- *Burks v. United States*, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978)

- Bradley v. State, 272 Ga. 740, 533 S.E.2d 727 (2000)
- Kimmel v. State, 261 Ga. 332, 404 S.E.2d 436 (1991)
- State v. Estevez, 232 Ga. 316, 206 S.E.2d 475 (1974)
- Trogdon v. State, 176 Ga. App. 246, 335 S.E.2d 481 (1985)

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