

SUPREME COURT OF GEORGIA

State v. Harris

292 Ga. 92 (2012) · Decided November 19, 2012

SUMMARY

The Georgia Supreme Court reviewed the first grant of a new trial to Xavier Harris, who had been convicted of felony murder and related offenses arising from the shooting death of Ron Strozier and an alleged conspiracy targeting an individual known as “D-Bone.” Applying the deferential standard under OCGA § 5-5-50, the court held that the successor trial judge did not abuse his discretion in finding that the verdicts were against the weight of the evidence and granting a new trial. The judgment was affirmed.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice
JURISDICTION	Georgia
DECIDED	November 19, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the superior court's grant of Harris's motion for a new trial following his convictions for felony murder and related crimes.
STANDARD OF REVIEW	When a trial court grants a first new trial on the general grounds in a criminal case, the appellate court may reverse only upon a showing that the trial court abused its discretion and that the law and facts require the verdict notwithstanding the trial judge's judgment. A successor judge's discretion is narrower than that of the judge who presided over the trial, but appellate review remains for abuse of discretion.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Georgia.
PARTIES	State of Georgia v. Xavier Harris

TOPICS

- criminal procedure
- appellate procedure
- standard of review
- post-conviction relief

PRACTICE AREAS

Criminal procedure

Appellate procedure

Criminal appeals

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by granting Harris a first new trial on the general grounds under OCGA § 5-5-50.
2. Whether the successor judge's narrower discretion, because that judge had not presided over the original trial, required reversal of the new-trial order.

HOLDINGS

1. The superior court did not abuse its discretion in granting Harris a first new trial on the general grounds; the appellate court therefore affirmed the order.
2. Although a successor judge's discretion to grant a new trial is narrower than that of the judge who presided over the trial, the successor judge's order must still be reversed only upon a showing of abuse of discretion, which was not shown here.

KEY QUOTATIONS

“The first grant of a new trial shall not be disturbed by an appellate court unless the appellant shows that the judge abused his discretion in granting it and that the law and facts require the verdict notwithstanding the judgment of the presiding judge.” (292 Ga. 94)

“Generally in this situation, the trial court is given a significant amount of deference to exercise its sound discretion because it was an observer of what transpired at trial; indeed, the trial judge is sometimes spoken of as the “thirteenth juror.”” (292 Ga. 94)

FACTUAL BACKGROUND

Harris was charged with participating in a conspiracy involving a confrontation with an individual known as D-Bone and the fatal shooting of Ron Strozier on August 1, 2005. The State alleged that Harris accompanied four codefendants to a wooded area to confront D-Bone and that the group intended to shoot Strozier and D-Bone and damage D-Bone's truck. Harris was convicted of felony murder and related offenses, but a successor judge later found that Harris was a peripheral figure who had been caught up in a neighborhood feud and granted a new trial on the general grounds.

PROCEDURAL HISTORY

Harris was tried with four codefendants and convicted of felony murder and several conspiracy, manslaughter, reckless-conduct, and firearm-related offenses. After the trial judge retired, a successor judge considered Harris's motion to vacate the convictions and for a new trial and granted a new trial on the general grounds under OCGA § 5-5-50. The State appealed, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- O'Neal v. State, 285 Ga. 361, 362-363 (677 SE2d 90) (2009)
- Head v. CSX Transp., Inc., 271 Ga. 670, 672 (2), (3) (524 SE2d 215) (1999)

OPINION

HINES, J.

Hines, Justice. The State appeals the superior court's grant of a new trial to Xavier Harris, who was found guilty of felony murder and related crimes in connection with the August 1, 2005 fatal shooting of Ron Strozier and the conspiracy to commit aggravated assault with a deadly weapon of an individual known only as "D-Bone." For the *93 reasons that follow, we affirm.

In March 2006, a Fulton County grand jury returned a 17-count indictment against Harris and four other men: Michael Grissom, Markell Dorsey, Rico Sims, and Darnell Amaker. Harris was named in all but four of the counts, which included charges of malice and felony murder, aggravated assault with a deadly weapon, conspiracy, criminal damage to property, and firearms possession.¹ The defendants were all tried together, and the State argued that the crimes were related and part and parcel of the same conspiracy.

The State's theory of the case was that a chain of events preceded the fatal incident, beginning with a physical altercation between Dorsey and D-Bone at a convenience store on July 31, 2005, during which D-Bone bested Dorsey. Seeking retribution, Dorsey enlisted his friend Sims to confront D-Bone; they walked through a wooded area between two apartment complexes in order to do so.

Sims emerged from the woods wearing a bullet proof vest and armed with an assault rifle. D-Bone, and his group of friends, which included Strozier, waylaid Sims and took his vest and rifle. The following day, August 1, 2005, Harris accompanied Dorsey, Sims, Amaker, and Grissom to the "wooded cut" leading to one of the apartment complexes.

The State maintained that Harris and the four co-defendants conspired to shoot Strozier and D-Bone, and "shoot up" D-Bone's truck. As they walked through the cut to confront D-Bone, the men encountered Strozier, and Strozier was fatally shot. Harris, who was 19 years old at the time of the crimes, related his version of events to police. During the fatal encounter, he heard a loud gunshot, like that of a shotgun, and then he ran, and that after running from the scene of the shooting, he met with the co-defendants *94 at Dorsey's apartment.

Later Harris rode with Sims and Grissom in a vehicle Sims had stolen, to another apartment complex looking for D-Bone; Dorsey and Amaker were in a second vehicle in the hunt for D-

Bone. They encountered D-Bone in his pick-up truck, and a shootout ensued. Harris fled this scene after the vehicle in which he was riding crashed. Dorsey, Amaker, Grissom, and Sims were arrested.

Harris turned himself in to police on August 18, 2005. The jury found Harris guilty of Strozier's felony murder predicated on the conspiracy to commit aggravated assault with a deadly weapon against Strozier, conspiracy to commit aggravated assault with a deadly weapon against D-Bone, and conspiracy to commit criminal damage to property in the first degree; voluntary manslaughter; involuntary manslaughter based upon reckless conduct; and reckless conduct.

Harris was also found guilty of conspiracy to commit aggravated assault against D-Bone, conspiracy to commit criminal damage to property in the first degree, and possession of a firearm during the commission of multiple crimes against D-Bone. Harris was either found not guilty of the remaining charges or they were resolved by directed verdicts of acquittal.

Harris moved to vacate his convictions and for a new trial; however, by that time the judge who presided over the trial had retired, and a different judge considered the motion for a new trial. This judge granted Harris a new trial on the general grounds, expressly finding that the verdicts were decidedly and strongly against the weight of the evidence, contrary to the law and principles of equity and justice, and that the evidence warranted the court exercising its discretion pursuant to OCGA § 5-5-50 to grant Harris a new trial.

OCGA § 5-5-50 provides: The first grant of a new trial shall not be disturbed by an appellate court unless the appellant shows that the judge abused his discretion in granting it and that the law and facts require the verdict notwithstanding the judgment of the presiding judge. This Court is to apply this standard of review in a criminal case in which there is the first grant of a new trial on the general grounds.

O'Neal v. State, 285 Ga. 361, 362-363 (677 SE2d 90) (2009). Generally in this situation, the trial court is given a significant amount of deference to exercise its sound discretion because it was an observer of what transpired at trial; indeed, the trial judge is sometimes spoken of as the "thirteenth juror." Id. at 362. OCGA § 5-5-50 acknowledges this deference to the trial court by mandating a standard of review that limits the appellate court's power to reverse a trial court's first grant of new trial.

Id. at 362. Decided November 19, 2012. Paul L. Howard, Jr., District Attorney, Christopher M. Quinn, Assistant District Attorney, for appellant. Long D. Vo, for appellee. It is certainly true that where, as in this case, the judge who hears the motion for a new trial is not the same judge as the one who presided over the original trial, the discretion of the successor judge is narrower in scope.

Head v. CSX Transp., Inc., 271 Ga. 670, 672 (2) (524 SE2d 215) (1999). Nevertheless, this Court is restricted to reversal of the grant of the new trial only if the successor judge abused his or her

discretion. *Id.* at 672 (3). It appears that prior to rendering the decision to grant Harris a new trial, the successor judge thoroughly reviewed the case, and presided over a full hearing in the matter.

The judge made independent evaluations not only about Harris's involvement in the crimes but about the culpability of the co-defendants, and concluded, *inter alia*, that Harris got "caught up" in the "neighborhood feud" and was "just a peripheral figure." Under these circumstances, we find no abuse of the successor court's discretion in granting Harris a new trial on the general grounds.

Judgment affirmed. All the Justices concur. Harris was charged with Count 1 - the malice murder of Strozier; Count 2 - the felony murder of Strozier while in the commission of aggravated assault with a deadly weapon against Strozier; Count 3 — the felony murder of Strozier while in the commission of conspiracy to commit aggravated assault with a deadly weapon against Strozier; Count 4 - the felony murder of Strozier while in the commission of aggravated assault with a deadly weapon against "D-Bone"; Count 5 — the felony murder of Strozier while in the commission of conspiracy to commit criminal damage to property in the first degree; Count 7 — the aggravated assault with a deadly weapon against Strozier; Count 8 - conspiracy to commit aggravated assault with a deadly weapon against Strozier; Count 9 - conspiracy to commit aggravated assault with a deadly weapon against "D-Bone"; Count 10 — conspiracy to commit criminal damage to property in the first degree; Count 14 — the aggravated assault of Christina Green; Count 15-possession of a firearm during the commission of the murder and aggravated assault of Strozier; Count 16 - possession of a firearm during the commission of the aggravated assault of Green; and Count 17 — possession of a firearm during the commission of multiple crimes against "D-Bone." Counts 6, 11, and 12 charged only Dorsey with the felony murder of Strozier while in the commission of possession of a firearm by a convicted felon, possession of a firearm by a convicted felon, and theft by receiving stolen property (auto); Count 13 charged solely Sims with theft by receiving stolen property (auto).