

SUPREME COURT OF MISSISSIPPI

Dondrego Bolton v. State of Mississippi

Bolton · No. 2011-CT-00161-SCT · Decided December 1, 2010

SUMMARY

The Supreme Court of Mississippi held that the burglary jury instructions were fatally flawed because they allowed conviction based on an intent to commit any crime rather than the specific crime charged in the indictment. The court found plain error despite the defendant's failure to object, reversed the lower court decisions, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Kitchens, Justice; Waller, C.J.; Dickinson, P.J.; Randolph, P.J.; Lamar, J.; Chandler, J.; Pierce, J.; King, J.; Coleman, J.
JURISDICTION	Mississippi
DECIDED	December 1, 2010
DOCKET	2011-CT-00161-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bolton sought review by writ of certiorari after the Mississippi Court of Appeals affirmed his burglary conviction and found the jury instructions sufficient. The Mississippi Supreme Court vacated its earlier denial of certiorari after issuing Daniels v. State and granted review.
STANDARD OF REVIEW	The Supreme Court reviewed the legal sufficiency of the jury instructions for plain error because Bolton did not object at trial.
PRECEDENTIAL VALUE	Published, en banc opinion of the Supreme Court of Mississippi; binding precedent within Mississippi.
PARTIES	Dondrego Bolton v. State of Mississippi

TOPICS

- jury instructions
- lesser included offense instructions
- criminal procedure
- preservation of error
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether jury instructions permitting conviction for burglary upon a finding that the defendant intended to commit larceny or any other crime failed to require the jury to find the specific intended crime charged in the indictment.
2. Whether the instructional error constituted plain error requiring reversal despite Bolton's failure to object at trial.

HOLDINGS

1. When the indictment specifies the intended crime underlying a burglary charge, the State must prove beyond a reasonable doubt, and the jury must find, the defendant's intent to commit that specific crime. An instruction allowing conviction based on intent to commit any crime is fatally flawed.
2. Failure to instruct the jury on an essential element of the charged crime constitutes plain error requiring reversal, even when the defendant did not object to the instruction at trial.

KEY QUOTATIONS

“The intent to commit a specific crime charged in the indictment must be proven beyond a reasonable doubt, and the jury must be so instructed.” (§3)

“Bolton’s jury instructions were “fatally flawed” in exactly the manner as Daniels’s: the jury was permitted to convict him of burglary if it found he had intended to commit any crime while inside the dwelling, and the prosecution therefore was relieved of its obligation of proving his intent to commit a particular crime.” (§4)

FACTUAL BACKGROUND

Bolton was charged with burglary of a dwelling after allegedly breaking and entering a home with intent to commit larceny. At trial, the jury was instructed that it could convict him if he entered the dwelling with intent to commit larceny or any other crime. The jury found him guilty, and he received a twenty-year prison sentence.

PROCEDURAL HISTORY

Bolton was convicted in the Hinds County Circuit Court of burglary of a dwelling and sentenced to twenty years in prison. The Court of Appeals affirmed, holding that the State did not need to prove that Bolton actually committed larceny and that the jury instruction allowing conviction upon intent to commit larceny or any other crime was sufficient. The Supreme Court reversed the Court of Appeals and circuit court and remanded for proceedings consistent with its decision.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court for proceedings consistent with the Supreme Court's decision.

CASES CITED

- Bolton v. State, 2012 WL 2104852, *2 (Miss. Ct. App. June 12, 2012)
- Daniels v. State, 107 So. 3d 961 (Miss. 2013)
- Rogers v. State, 95 So. 3d 623, 632 (Miss. 2012)
- Berry v. State, 728 So. 2d 568, 571 (Miss. 1999)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF MISSISSIPPI NO. 2011-CT-00161-SCT DONDREGO BOLTON v. STATE OF MISSISSIPPI ON WRIT OF CERTIORARI DATE OF JUDGMENT: 12/01/2010 TRIAL JUDGE: HON. W. SWAN YERGER COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT ATTORNEYS FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER BY: JUSTIN TAYLOR COOK LESLIE S. LEE ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS SCOTT STUART DISTRICT ATTORNEY: ROBERT S. SMITH NATURE OF THE CASE: CRIMINAL - FELONY DISPOSITION: REVERSED AND REMANDED - 05/16/2013 MOTION FOR REHEARING FILED: MANDATE ISSUED: EN BANC.

KITCHENS, JUSTICE, FOR THE COURT: ¶1. Dondrego Bolton was charged with burglary of a dwelling in 2010. He was found guilty in the Circuit Court of the First Judicial District of Hinds County and sentenced to twenty years in prison. Bolton's indictment originally charged him with breaking and entering a dwelling with the intent to commit larceny. At trial, the jury was instructed on burglary of a dwelling and the lesser-included offense of trespassing.

The jury was told that if it found that Bolton had broken and entered into the home "[w]ith the intent to commit the crime of larceny or any other crime," (emphasis added) he was guilty of burglary. Bolton did not object to the jury instructions at the time. ¶2.

The Court of Appeals found these jury instructions to be sufficient. Bolton v. State, 2012 WL 2104852, *2 (Miss. Ct. App. June 12, 2012). That court found that "the State did not have to prove – and the jury did not have to find – Bolton committed larceny." Id. While this is correct, under this Court's recent holding in Daniels v. State, 107 So. 3d 961 (Miss.

2013), the jury did have to find that Bolton had intended to commit larceny, since that was the intended offense specified by the grand jury. Here, however, the Court of Appeals found it sufficient that "[t]he jury found beyond a reasonable doubt that Bolton intended to commit a crime in Vance's house...." Bolton, 2012 WL 2104852, at *2 (emphasis added). ¶3.

Bolton filed a petition for certiorari with this Court, alleging that the jury instructions were improper because they permitted the jury to convict him of burglary if it found that he had intended to commit any crime while inside the dwelling. This Court initially denied the petition.

However, before the mandate issued, we handed down our unanimous decision in *Daniels*, holding that the State must “offer proof of the intent to commit some specific crime as the second element of burglary.” *Daniels*, 107 So. 3d at 964.

The intent to commit a specific crime charged in the indictment must be proven beyond a reasonable doubt, and the jury must be so instructed. Because the holding in *Daniels* directly contradicted the Court of Appeals’ holding in *Bolton*, we vacated the denial of certiorari and granted the petition. 2 ANALYSIS ¶4.

In *Daniels*, we held that “the trial court’s failure to instruct the jury properly on the essential elements of the crime of burglary requires reversal.” *Id.* (emphasis added). There, the jury was instructed that *Daniels* was guilty of burglary if it found beyond a reasonable doubt that, once he had broken inside the dwelling, he “intended... to commit a crime therein, which is a crime under the laws of Mississippi....” *Id.* at 962-63.

We held that the instructions were “fatally flawed” and we remanded for a new trial. *Id.* at 962. *Bolton*’s jury instructions were “fatally flawed” in exactly the manner as *Daniels*’s: the jury was permitted to convict him of burglary if it found he had intended to commit any crime while inside the dwelling, and the prosecution therefore was relieved of its obligation of proving his intent to commit a particular crime. “One of the essential elements of the crime of burglary is the intent to commit a specific crime.” *Id.* at 964.

Although *Bolton* did not object to the jury instruction, the “[f]ailure to instruct the jury on the essential elements of the crime is plain error.” *Rogers v. State*, 95 So. 3d 623, 632 (Miss. 2012) (citing *Berry v. State*, 728 So. 2d 568, 571 (Miss. 1999)).

Under *Daniels*, *Bolton*’s jury instructions failed to instruct the jury on all of the essential elements of burglary, and that omission constitutes plain error. CONCLUSION ¶5. Because the jury was improperly instructed on the essential elements of burglary consistent with this Court’s recent decision in *Daniels v. State*, we reverse the decisions of the Court of Appeals and the Hinds County Circuit Court and remand *Dondrego Bolton*’s case to the trial court for proceedings consistent with this decision. ¶6.

REVERSED AND REMANDED. 3 WALLER, C.J., DICKINSON AND RANDOLPH, P.JJ., LAMAR, CHANDLER, PIERCE, KING AND COLEMAN, JJ., CONCUR. 4