

SUPREME COURT OF GEORGIA

Jones v. State, 276 Ga. 663

581 S.E.2d 546 (2003) · No. S03A0220 · Decided June 2, 2003

SUMMARY

The Supreme Court of Georgia affirmed in part and remanded in part the denial of Daryl Jones's motion for a new trial following convictions arising from a fatal shooting. The court held that the evidence was sufficient, that bifurcated proceedings did not violate double jeopardy, and that the ineffective-assistance claim required a remand for a hearing because it had not been raised in the trial court.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Justice; All Justices
JURISDICTION	Georgia
DECIDED	June 2, 2003
DOCKET	S03A0220
DISPOSITION	other
PROCEDURAL POSTURE	Jones appealed the denial of his amended motion for new trial following convictions for voluntary manslaughter and felony murder based on possession of a firearm by a convicted felon.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether, viewing the evidence in the light most favorable to the verdict, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. The legal question whether a claim is procedurally barred and the application of double-jeopardy principles are reviewed as questions of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia
PARTIES	Daryl Jones v. The State

TOPICS

- criminal procedure
- double jeopardy
- ineffective assistance
- appellate procedure
- standard of review

PRACTICE AREAS

Criminal law

Criminal procedure

Appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Jones's convictions.
2. Whether submitting the felony-murder charge to the jury after the jury had found Jones guilty of voluntary manslaughter on the malice-murder count violated double jeopardy.
3. Whether Jones could assert ineffective assistance of trial counsel for the first time on appeal when the claim had not been raised in the trial court or in the amended motion for new trial.

HOLDINGS

1. The evidence was sufficient to enable a rational trier of fact to find Jones guilty beyond a reasonable doubt of the offenses for which he was convicted.
2. Submitting the felony-murder charge after the jury had returned a verdict of voluntary manslaughter on the malice-murder count did not violate double jeopardy.
3. Jones was procedurally barred from asserting ineffective assistance of trial counsel for the first time on appeal because he had not raised the issue in the trial court and no hearing had been held on it; however, the case had to be remanded for a hearing on the claim.

KEY QUOTATIONS

“Viewed to support the jury verdict, we find the evidence adduced at trial was sufficient to enable a rational trier of fact to find appellant guilty beyond a reasonable doubt of all of the crimes of which he was convicted.” (547)

“Appellant was placed in jeopardy and convicted only once and, therefore, his conviction for felony murder was not barred by double jeopardy.” (548)

FACTUAL BACKGROUND

Daryl Jones fatally shot Gerald Lattimore in the head after walking toward him and pulling a gun concealed under his shirt. Eyewitnesses testified that there had been no provocation before the shooting, while Jones claimed Lattimore had threatened him and his girlfriend the prior night. Jones was prosecuted in a bifurcated trial and convicted of voluntary manslaughter and felony murder based on possession of a firearm by a convicted felon.

PROCEDURAL HISTORY

Jones was indicted in Bibb County, tried before a jury in a bifurcated proceeding, and found guilty of voluntary manslaughter as a lesser included offense of malice murder and of felony murder based on possession of a firearm by a convicted felon. The trial court sentenced him to life imprisonment without parole for felony murder, denied his motion for new trial as amended, and Jones appealed. The Supreme Court of Georgia affirmed in part and remanded in part for a hearing on the ineffective-assistance claim.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand for a hearing on Jones's ineffective-assistance-of-trial-counsel claim.

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Head v. State, 253 Ga. 429(3), 322 S.E.2d 228 (1984)
- Morris v. State, 264 Ga. 823(4), 452 S.E.2d 100 (1995)
- Turner v. State, 152 Ga. App. 354, 262 S.E.2d 618 (1979)
- Johnson v. State, 259 Ga. 428(3), 383 S.E.2d 115 (1989)

OPINION

HUNSTEIN, J.

581 S.E.2d 546 (2003) 276 Ga. 663 JONES v. The STATE. No. S03A0220. Supreme Court of Georgia. June 2, 2003. *547 Jonathan P. Waters, Macon, for appellant. Howard Z. Simms, Dist. Atty., Eugene Felton, Jr., Asst. Dist. Atty., Thurbert E. Baker, Atty. Gen., Madonna M. Heinemeyer, Asst. Atty. Gen., for appellee. HUNSTEIN, Justice. Daryl Jones was indicted for malice murder, felony murder with possession of a firearm by a convicted felon as the underlying offense, and possession of a firearm during the commission of a crime, all in connection with the shooting death of Gerald Lattimore.

His motion to bifurcate his trial on the malice murder count from his trial on the remaining counts was granted. He was tried before a jury for malice murder and found guilty of voluntary manslaughter and thereafter, in the second phase of the trial, found guilty of felony murder and possession of a firearm by a convicted felon.[1] In this appeal from the denial of his amended motion for new trial, appellant contends that the evidence was insufficient to support the jury's verdict, that his felony murder conviction violated double jeopardy, and that his trial counsel rendered ineffective assistance.

We affirm in part and remand in part. 1. The evidence adduced at trial authorized the jury to find that appellant fatally shot Lattimore. According to numerous eyewitnesses to the incident, there was no provocation before the shooting. Instead, appellant walked towards Lattimore, pulled out a gun concealed under his shirt, shot Lattimore in the head, and then fled the scene.

Appellant did not deny shooting Lattimore, but contended that he did so because Lattimore had threatened appellant and his girlfriend the night before. Viewed to support the jury verdict, we find

the evidence adduced at trial was sufficient to enable a rational trier of fact to find appellant guilty beyond a reasonable doubt of all of the crimes of which he was convicted.

See *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). 2. Appellant sought bifurcation of the charge of malice murder from the charge of felony murder predicated upon the status offense of possession of a firearm by a convicted felon in order to avoid the prejudicial impact of injecting his character into evidence. See *Head v. State*, 253 Ga. 429(3), 322 S.E.2d 228 (1984).

On appeal, however, appellant contends that the bifurcation resulted in a double jeopardy violation because the question of his guilt on the charge of felony murder was submitted to the jury after it had deliberated on the malice murder count and determined that he was guilty of the lesser offense of voluntary manslaughter.

Under OCGA § 16-1-8(a)(1), "[a] prosecution is barred if the accused was formerly prosecuted for the same crime based upon the same material facts, if such former prosecution... [r]esulted in either a conviction or an acquittal."

In this case, the killing for which appellant was charged was not the subject of another prosecution and his guilt was determined by the same jury in the same prosecution. The short delay between *548 the jury's verdicts on the counts of malice and felony murder due to the bifurcation do not constitute a termination of the prosecution as contemplated by OCGA § 16-1-8(a).

See *Morris v. State*, 264 Ga. 823(4), 452 S.E.2d 100 (1995). Appellant was placed in jeopardy and convicted only once and, therefore, his conviction for felony murder was not barred by double jeopardy. See *Turner v. State*, 152 Ga.App. 354, 262 S.E.2d 618 (1979) (defendant placed in jeopardy when in court of competent jurisdiction, with sufficient indictment, he has been arraigned, has pled, and jury impaneled and sworn).

3. We conclude that appellant is procedurally barred from asserting that his trial counsel was ineffective in this appeal inasmuch as appellant did not assert ineffective assistance of trial counsel as a claim in the trial court and no hearing was held on the issue.

We have held that, where the issue of effectiveness is raised for the first time on appeal by an appellate attorney who did not represent the defendant at trial or on motion for new trial and who did not file an amended motion for new trial, a remand for hearing on the issue of effectiveness is appropriate. See *Johnson v. State*, 259 Ga. 428(3), 383 S.E.2d 115 (1989).

Judgment affirmed and case remanded. All the Justices concur. NOTES [1] The crime occurred on December 1, 2001. Jones was indicted in Bibb County on February 19, 2002 on charges of malice murder, felony murder based on possession of a firearm by a convicted felon, and possession of a firearm during the commission of a crime.

The State served notice of intent to present matters in aggravation of sentencing and sought enhanced sentencing based under OCGA § 17-10-7. Following a bifurcated trial on May 6-8, 2002, a jury found him guilty of voluntary manslaughter as a lesser included offense of malice murder and felony murder based on possession of a firearm by a convicted felon.

On May 8, 2002 Jones was sentenced to life imprisonment without parole for the felony murder. The voluntary manslaughter stood vacated by operation of law and after trial the State entered an order of nolle prosequi with respect to the possession of a firearm during the commission of a crime charge. Jones filed a motion for new trial on May 23, 2002 and amended it on June 11, 2002.

The motion was denied on July 16, 2002. A notice of appeal was filed August 13, 2002. On August 14, 2002 the trial court granted Jones request for the appointment of new counsel for his appeal. The appeal was docketed on October 17, 2002 and orally argued on February 17, 2003.