

Rel: April 23, 2021

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

CR-19-0832

Steven Joshua Garrison

v.

State of Alabama

Appeal from Morgan Circuit Court
(CC-14-702)

COLE, Judge.

Steven Joshua Garrison appeals his three convictions for first-degree burglary, a violation of § 13A-7-5, Ala. Code 1975, and one conviction for first-degree robbery, a violation of § 13A-8-41, Ala. Code 1975.

Facts and Procedural History

Because Garrison does not challenge the sufficiency of the evidence, only a short recitation of facts is necessary.

Around 1:00 a.m., on January 28, 2014, Garrison and Matthew Bond knocked on Mark Hokett's door and pushed their way into his house, pointing their guns at Hokett. Bond carried a pistol, and Garrison carried a shotgun. After forcing entry into Hokett's house, Bond "pistol-whipped" Hokett while Garrison hit Hokett once with the shotgun and threatened to shoot Hokett if he did not cooperate, warning him: "Don't make me shoot you ... because I've got buckshot." (R. 123.) Bond and Garrison then demanded money and drugs from Hokett and forced him to open a safe from which they stole two guns. Bond and Garrison also stole two other guns from Hokett before leaving. Hokett's security-camera video, corroborating Hokett's testimony, was admitted at trial. Decatur Police Sergeant Mike Burlison testified that he identified Bond and Garrison from Hokett's security-camera video, and he located Garrison for an

CR-19-0832

interview. After Garrison was apprised of his Miranda¹ rights, which he waived, Garrison voluntarily provided a statement to Sgt. Burleson, admitting that he and Bond went to "teach [Hokett] a lesson," that he held a shotgun on Hokett while Bond pistol-whipped Hokett, and that he and Bond took guns from Hokett's home. (C. 122-24; R. 165.) Garrison was charged with three counts of first-degree burglary and one count of first-degree robbery. Garrison's motions for a judgment of acquittal on all counts were denied.

At the charging conference, the trial court stated its intent to instruct the jury on all three counts of first-degree burglary and the one count of first-degree robbery. Garrison's counsel made no objections. On August 20, 2019, Garrison was convicted of three counts of first-degree burglary and one count of first-degree robbery. The trial court adjudged Garrison guilty of all four counts.

On June 3, 2020, Garrison's sentencing hearing was held. The State explained to the trial court that "the first three counts were all alternative

¹Miranda v. Arizona, 384 U.S. 436 (1966).

CR-19-0832

counts of burglary in the first degree" such that Garrison was eligible to "receive [only] one sentence for those three [convictions] and one sentence for the robbery in the first degree." (R. 251.) The trial court agreed that the three first-degree burglary counts were "alternative counts" and sentenced Garrison only on the first count of first-degree burglary and on the one count of first-degree robbery. Based on Garrison's three prior felony convictions,² the trial court sentenced him, as a habitual felony offender, to life imprisonment without the possibility of parole for each conviction. The trial court ordered that both sentences were to run consecutively.

Garrison filed a motion for reconsideration of sentencing, arguing that his sentences violated his double-jeopardy rights because "there was but one event or transactional conduct, which should require only one sentence not two for the conduct." (C. 59.) The trial court never ruled on the motion. This appeal follows.

²Garrison agreed that he had three prior felony convictions -- two prior convictions for third-degree burglary and one prior conviction for third-degree escape. (R. 254.)

Standard of Review

A double-jeopardy claim presents a question of law. "The standard for review for pure questions of law in criminal cases is de novo." Ex parte T.D.M., 117 So. 3d 933, 937 (Ala. 2011) (citing Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003)).

Analysis

On appeal, Garrison argues that his convictions for three counts of first-degree burglary based on the same event violates the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and that two of those convictions should be vacated. For the reasons provided below, this Court agrees.

As an initial matter, the State argues that Garrison's argument is not preserved for review. The State correctly asserts that Garrison never raised this specific double-jeopardy argument before, during, or after his trial or his sentencing hearing. Rather, Garrison argued, in his motion for resentencing, that he should have only received one sentence, instead of two, because his first-degree robbery and first-degree burglary offenses arose from one event. Garrison does not reassert this argument on appeal

CR-19-0832

but makes an entirely new argument that two of his first-degree burglary convictions must be vacated. It is well settled that, "to preserve an issue for appellate review, the issue must be timely raised and specifically presented to the trial court and an adverse ruling obtained." Cochran v. State, 111 So. 3d 148, 153-54 (Ala. Crim. App. 2012) (quoting Mitchell v. State, 913 So. 2d 501, 505 (Ala. Crim. App. 2005)). However, the issue whether Garrison's three convictions under the same first-degree burglary statute violated his double-jeopardy rights is, contrary to the State's contention, a jurisdictional matter that cannot be waived. See McPherson v. State, 933 So. 2d 1114, 1120 (Ala. Crim. App. 2005) (holding that "Counts I, II, and III of the indictment alleged various methods of proving [the same offense] rather than independent, separate offenses. Therefore, the trial court did not have jurisdiction to enter judgments on both counts of discharging a firearm into an occupied dwelling") (emphasis added), and Ex parte Robey, 920 So. 2d 1069, 1071 (Ala. 2004) (finding "no indication that the Legislature intended to impose multiple punishments under the separate subsections of [first-degree assault] when the actions ... are based on the same conduct of the accused, as well as the same

CR-19-0832

injuries to the same victim," and holding that "[t]he violation of Robey's double-jeopardy rights raises questions of the trial court's jurisdiction to enter a judgment on both assault counts") (emphasis added). Because a trial court does not have jurisdiction to enter judgments on three counts of first-degree burglary arising from a single event, "this issue is properly before this Court, even though [Garrison] did not first present it to the trial court." McPherson, 933 So. 2d at 1120. Accordingly, we address the merits of Garrison's double-jeopardy argument.

In Alabama, a person commits the offense of first-degree burglary if

"he or she knowingly and unlawfully enters or remains unlawfully in a dwelling with intent to commit a crime therein, and, if, in effecting entry or while in dwelling or in immediate flight therefrom, the person or another participant in the crime:

"(1) Is armed with explosives; or

"(2) Causes physical injury to any person who is not a participant in the crime; or

"(3) In effecting entry, is armed with a deadly weapon or dangerous instrument or, while in the dwelling or immediate flight from the dwelling, uses or threatens the immediate use of a deadly weapon or dangerous instrument against another person. The use of or threatened use of a deadly weapon or dangerous instrument does not include the mere acquisition of

CR-19-0832

a deadly weapon or dangerous instrument during the burglary."

§13A-7-5, Ala. Code 1975 (emphasis added).

On June 6, 2014, Garrison was indicted for three counts of first-degree burglary as follows:

"[Count I]

"Matthew Lyle Bond and Steven Joshua Garrison, whose names are to the Grand Jury otherwise unknown, did knowingly and unlawfully enter or remain unlawfully in a dwelling of Mark Henry Hokett with intent to commit a crime therein, to-wit, theft, and while effecting entry, said defendants were armed with a deadly weapon or dangerous instrument, to-wit: a pistol and a shotgun, in violation of Section 13A-7-5 of the Code of Alabama,

"Count II

"The Grand Jury of said County further charges that before the finding of this indictment, Matthew Lyle Bond and Steven Joshua Garrison, whose names are to the Grand Jury otherwise unknown, did knowingly and unlawfully enter or remain unlawfully in a dwelling of Mark Henry Hokett with intent to commit a crime therein, to-wit: theft, and while effecting entry or while in the dwelling or in immediate flight therefrom, said defendants used or threatened the immediate use of a deadly weapon or dangerous instrument, to-wit: a pistol and a shotgun, in violation of Section 13A-7-5 of the Code of Alabama,

"Count III

"The Grand Jury of said County further charges that before the finding of this indictment, Matthew Lyle Bond and Steven

CR-19-0832

Joshua Garrison, whose names are to the Grand Jury otherwise unknown, did knowingly and unlawfully enter or remain unlawfully in a dwelling of Mark Henry Hokett with intent to commit a crime therein, to-wit: theft, and while effecting entry or while in the dwelling or in immediate flight therefrom, said defendants caused physical injury to Mark Henry Hokett by striking him in the head with a pistol, in violation of Section 13A-7-5 of the Code of Alabama[.]"

(C. 10-11.) Garrison's indictment thus followed the language found in Alabama's first-degree burglary statute. §13A-7-5 (a)(2)(3), Ala. Code 1975.

The State argues on appeal that the three counts of first-degree burglary were merely alternative counts. However, the trial court instructed the jury on all three counts, and the jury found Garrison guilty of all three first-degree-burglary counts. Moreover, following the verdicts, the trial court adjudged Garrison guilty of all three first-degree-burglary counts. Although the State urges us to affirm all four of Garrison's convictions because the trial court ultimately sentenced Garrison on only one first-degree burglary count and one first-degree-robbery count, this Court has recognized that "a second conviction is an impermissible punishment, even if it results in no greater sentence, because it may have

CR-19-0832

potential adverse collateral consequences such as delayed parole eligibility or an increased punishment for recidivism." Madison v. State, 718 So. 2d 90, 95 (Ala. Crim. App. 1997) (citing Ball v. United States, 470 U.S. 856 (1985)). Thus, any convictions that violated Garrison's right to be free from double jeopardy must be vacated even if he was sentenced for only one of those convictions.

"The Alabama Supreme Court has held that 'where there are two different methods of proving the offense charged in one statute, they [do not] constitute separate offenses.'" Childs v. State, 238 So. 3d 90, 92 (Ala. Crim. App. 2017) (quoting Sisson v. State, 528 So. 2d 1159, 1162 (Ala. 1988)). Accordingly, a defendant cannot be convicted of multiple counts of violating the same statute arising out of a single event. See, e.g., King v. State, 574 So. 2d 921, 929-30 (Ala. Crim. App. 1990) (holding that "the appellant could constitutionally only be convicted of one count instead of the four counts of which he was convicted" because it was "clear that only one act took place"). Moreover, this Court has specifically held that a defendant cannot be convicted of multiple counts of first-degree burglary arising out of a single event. See Birdsong v. State, 267 So. 3d 343, 351

CR-19-0832

(Ala. Crim. App. 2017) (holding that a defendant cannot be convicted of three counts of first-degree burglary based on a single event), and Childs v. State, 238 So. 3d 90, 92 (Ala. Crim. App. 2017) (holding that a defendant cannot be convicted of two counts of first-degree burglary for the same offense). As in these cases, it is clear that the burglary Garrison committed on or about January 28, 2014, was one event. Thus, Garrison's three convictions, under different subsections of the same first-degree-burglary statute based on that one event, offend the Double Jeopardy Clause.

In sum, because "the counts were alternative methods of proving the same offense -- burglary -- and are not three separate and distinct offenses," Garrison's "conduct did not constitute three separate offenses [and] convicting [him] three times for the same offense violated his right to be free from double jeopardy." Birdsong, 267 So. 3d at 351. Because the trial court sentenced Garrison for first-degree burglary only as to Count I in his indictment, i.e., that he was armed with a deadly weapon, that conviction and sentence are affirmed. Garrison's conviction and sentence for first-degree robbery, Count IV, are also affirmed. This case

CR-19-0832

is remanded, however, to the trial court for that court to vacate Garrison's two convictions for first-degree burglary as to Count II and Count III in Garrison's indictment.

Conclusion

For these reasons, the trial court's judgment is affirmed with respect to Garrison's one conviction for first-degree burglary, as to Count I of his indictment, that he was armed with a deadly weapon or dangerous instrument, §13A-7-5 (a) (3), Ala. Code, 1975, and Garrison's conviction for first-degree robbery, under Count IV of his indictment, §13A-8-4, Ala. Code, 1975. The resulting sentences from those two convictions are likewise affirmed. This case is remanded, however, to the trial court with instructions for that court to vacate two of Garrison's first-degree burglary convictions -- Count II, that he caused physical injury to the victim, and Count III, that he used or threatened to use a deadly weapon on the victim. Due return shall be made to this Court within 42 days of the date of this opinion.

AFFIRMED IN PART; AND REMANDED WITH INSTRUCTIONS.

Windom, P.J., and Kellum, McCool, and Minor, JJ., concur.