

In the Supreme Court of Georgia

Decided: October 21, 2013

S13A0988. WALLACE v. THE STATE.

NAHMIAS, Justice.

Appellant Corey Wallace was found guilty of felony murder and other crimes in connection with the shooting death of Willie Merritt.¹ On appeal, he contends that the trial court's charge prevented the jury from properly considering a voluntary manslaughter verdict on the felony murder counts of his

¹ The crimes occurred on the night of July 4-5, 2003. On June 23, 2006, a Fulton County grand jury indicted Appellant for malice murder, felony murder based on aggravated assault, felony murder based on possession of a firearm by a convicted felon, aggravated assault, and possession of a firearm during the commission of aggravated assault. After a trial from April 24-27, 2007, the jury acquitted Appellant of malice murder but found him guilty of the remaining charges. The trial court sentenced Appellant to serve life in prison for the felony murder based on aggravated assault and a consecutive term of five years on the firearm count; the other convictions merged. On May 21, 2007, Appellant filed a pro se notice of appeal to the Court of Appeals, which transferred the case to this Court on May 7, 2008. On June 2, 2008, this Court dismissed the appeal and remanded the case to the trial court to consider any claims of ineffective assistance of counsel along with a motion for new trial that Appellant's trial counsel had timely filed under the wrong indictment number. Appellant, assisted by new counsel, amended his new trial motion on June 9, 2010, and again on May 19, 2011. After a hearing, the trial court entered an order on September 14, 2011, vacating Appellant's conviction and sentence for felony murder based on aggravated assault and resentencing him to serve life in prison for felony murder based on possession of a firearm by a convicted felon, holding that the enumerations of error related to the vacated count were therefore moot, and otherwise denying the new trial motion. Appellant filed a timely notice of appeal, and the case was docketed in this Court for the April 2013 Term and submitted for decision on the briefs.

indictment and that his trial counsel provided constitutionally ineffective assistance. We affirm.

1. The evidence presented at trial, viewed in the light most favorable to the verdict, showed the following. On the night of July 4, 2003, Appellant's girlfriend drove him, Demetrius Ransom, and Randall McCrary to the Body Tap, an exotic dance club, where they encountered Merritt and Vincent Jenkins, whom Ransom knew. Ransom ended up playing pool with Merritt. The game started off friendly but became contentious, and a fight broke out. Merritt and several friends, including Jenkins, severely beat Appellant before bouncers intervened and escorted the two groups out of the club separately.

As Appellant sat in his girlfriend's car about to drive away, he caught a glimpse of his face in a mirror and was infuriated by the extent of his injuries. Appellant then loaded his handgun, got out of the car, and chased after Merritt, who ran away. Merritt tripped, and when Appellant caught up with him, Appellant shot him six times, once in the back and then, as Merritt lay on the ground, once in his chest, left arm, right arm, left leg, and right leg. Merritt died of his injuries. Meanwhile, Ransom also got out of the car and pistol-whipped Jenkins.

Appellant and Ransom were jointly indicted for murder and other crimes. Ransom pled guilty to aggravated assault against Jenkins and agreed to cooperate with the State. Ransom testified at trial that he saw Appellant shoot Merritt. Appellant's then-girlfriend testified that she saw him with a pistol during the confrontation; that Ransom did not shoot Merritt; and that she later heard Appellant say that he shot someone. McCrary testified that he saw Appellant chasing Merritt as Merritt ran away, and the forensic evidence indicated that only one gun was fired at the crime scene at the time of the incident.

Viewed in the light most favorable to the verdict, the evidence presented at trial and summarized above was sufficient to authorize a rational jury to find Appellant guilty beyond a reasonable doubt of the crimes for which he was convicted and sentenced. See Jackson v. Virginia, 443 U.S. 307, 319 (99 SC 2781, 61 LE2d 560) (1979). See also Vega v. State, 285 Ga. 32, 33 (673 SE2d 223) (2009). (“It was for the jury to determine the credibility of the witnesses and to resolve any conflicts or inconsistencies in the evidence.” (citation omitted)).

2. Relying on Edge v. State, 261 Ga. 865, 867 (414 SE2d 463) (1992),

Appellant contends the trial court failed to instruct the jury that if it found the aggravated assault that was the underlying felony for one of the felony murder counts was the result of provocation and passion, then the jury could not find him guilty of felony murder and would be authorized, but not required, to find him guilty of voluntary manslaughter. However, Edge has been applied only to felony murder convictions in which the underlying felony – typically aggravated assault – was “an integral part of the killing of the victim,” not where the underlying felony was “independent of the killing itself.” *Id.* at 867 n.3. See, e.g., Grimes v. State, ___ Ga. ___ (___ SE2d ___) (Case No. S13A1211, decided Sept. 9, 2013) (2013 Ga. Lexis 653, at *7) (holding that Edge did not apply to defendant’s felony murder conviction based on the underlying felony of attempted armed robbery, which was not an integral part of the killing). In particular, this Court has twice declined to apply Edge to felony murder convictions based on the felony of possession of a firearm by a convicted felon. See Lawson v. State, 280 Ga. 881, 883 (635 SE2d 134) (2006); Sims v. State, 265 Ga. 35, 36 (453 SE2d 33) (1995).

Appellant’s argument that Edge undermines his conviction for felony murder based on aggravated assault is moot, because in its order on Appellant’s

motion for new trial, the trial court vacated that conviction, so the only felony murder conviction Appellant now has is based on the felony of possession of a firearm by a convicted felon. And as to that conviction, Appellant has given us no persuasive reason to depart from our holdings in Lawson and Sims.

3. Appellant also contends that his trial counsel provided constitutionally ineffective assistance by failing to impeach Ransom with prior convictions and by not requesting a limiting instruction on Appellant's prior conviction.

To prevail on this claim, Appellant must show that his trial counsel's performance was professionally deficient and that, but for the deficiency, there is a reasonable probability that the outcome of the trial would have been more favorable to him. See Strickland v. Washington, 466 U.S. 668, 687, 694 (104 SCt 2052, 80 LE2d 674) (1984). "This burden, although not impossible to carry, is a heavy one." Young v. State, 292 Ga. 443, 445 (738 SE2d 575) (2013). And the reviewing court need not "address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 446 U.S. at 697.

Boothe v. State, 293 Ga. 285, 295 (745 SE2d 594) (2013).

(a) Under Georgia's old Evidence Code, which applied when this case was tried, to impeach a witness with a prior conviction, a party was required to offer a certified copy of the conviction unless the opposing party did

not object to the lack of a certified copy and the witness admitted the conviction. See Fuller v. State, 278 Ga. 812, 815 n.9 (607 SE2d 581) (2005); Harwell v. State, 270 Ga. 765, 768-769 (512 SE2d 765) (1999).² Ransom did not admit any prior convictions in his trial testimony, and he did not testify at the motion for new trial hearing. Appellant also did not introduce at the hearing any certified copies of the prior convictions that he claims trial counsel should have obtained and used to impeach Ransom. Thus, Appellant did not satisfy his burden of showing ineffective assistance in this respect. See Fuller, 278 Ga. at 815 (rejecting the defendant’s contention that trial counsel provided deficient performance by failing to impeach two witnesses with their prior convictions, where the defendant did not produce certified copies of the prior convictions at the motion for new trial hearing); Bihlear v. State, 295 Ga. App. 486, 488-489 (672 SE2d 459) (2009) (holding that the defendant failed to carry his burden to show deficient performance of trial counsel in not impeaching two witnesses with their prior convictions where he “did not produce certified copies of those convictions at the motion for new trial hearing to establish that these witnesses

² We express no opinion on how such impeachment may occur under the new Evidence Code, which applies to cases tried after January 1, 2013. See Ga. L. 2011, p. 99, § 101.

did, in fact, have criminal records”). See also Kilby v. State, 289 Ga. App. 457, 461 (657 SE2d 567) (2008) (treating the failure to produce certified copies of prior convictions that the defendant says trial counsel should have used for impeachment as a failure to make the required “showing of prejudice, i.e., that the use of the conviction would have made a difference in the outcome of his trial”); Baskin v. State, 267 Ga. App. 711, 714 (600 SE2d 599) (2004) (same).

(b) Trial counsel did not request a limiting instruction on the use of Appellant’s prior conviction for possession of a firearm by a convicted felon to prove his status as a convicted felon. Pretermitted whether counsel performed deficiently in this regard, Appellant did not show resulting prejudice. Evidence that Appellant had a prior felony conviction was relevant to the indicted charge of felony murder based on possession of a firearm by a convicted felon. See Burgess v. State, 278 Ga. 314, 316 (602 SE2d 566) (2004). In addition, the State did not bring out the specific facts of the underlying prior conviction; possession of a firearm by a convicted felon was not a type of prior offense that would be likely to inflame the passions of the jury and raise a significant risk of conviction based on improper considerations; and the evidence against Appellant was strong. Thus, Appellant did not show that there

is a reasonable probability that the outcome of his trial would have been more favorable if his trial counsel had requested a limiting instruction. See *id.* Compare Ross v. State, 279 Ga. 365, 368 (614 SE2d 31) (2005) (involving the admission of the defendant's prior conviction for enticing a child for indecent purposes in his trial for murder of an unrelated victim).

Judgment affirmed. All the Justices concur.