

THIS WEEK:

- **Sentencing; *Edge***
- **Motions for Continuance; Requests for Speedy Trial**
- **Armed Robbery; Sufficiency of the Evidence**

Sentencing; *Edge*

Griggs v. State, S18A1594 (12/10/18)

Appellant was convicted of voluntary manslaughter as a lesser-included offense of malice murder and two counts of felony murder (predicated on aggravated assault and possession of a firearm by a convicted felon). The trial court stated that the guilty verdicts on voluntary manslaughter and felony murder predicated on aggravated assault were vacated as a matter of law, and sentenced appellant to life without parole for felony murder predicated on possession of a firearm by a convicted felon.

Appellant contended that the trial court erred by vacating the verdict on the voluntary manslaughter count and sentencing him for felony murder, contending that the trial court instead should have vacated the felony murder counts and entered a conviction and sentence for voluntary manslaughter. The Court disagreed.

The Court stated that in *Edge v. State*, 261 Ga. 865 (1992), it held that when a defendant is found guilty of voluntary manslaughter and felony murder premised on aggravated assault, and both charges arise from the same assault, the defendant should be convicted and sentenced only for voluntary manslaughter. In that scenario, it must be presumed that the jurors found the underlying aggravated assault to be the product of provocation and passion. The Court noted that it has extended this rule to other fact patterns in which the felony murder is premised on another underlying felony that is equally integral to the homicide and susceptible of mitigation by the sort of provocation and passion that voluntary manslaughter involves.

But the vacatur of the felony murder verdict is not required if the underlying felony is independent of the killing itself, such as burglary, robbery, or even an assault that is directed against someone other than the homicide victim. Thus, the Court noted, it has declined to extend the rule to cases in which the felony murder is premised on a felony that is not integral to the homicide.

Acknowledging this case law limiting the reach of *Edge*, appellant nevertheless argued that the Court should extend the *Edge* rule to his case. He pointed to evidence that appellant knew the victim owned a gun and that the victim had been behaving in a threatening manner in the days leading up to the shooting. But here, the Court found, notwithstanding appellant's testimony that he obtained a gun to protect himself from the victim, there was no evidence at all that appellant came into the unlawful possession of a firearm only as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person, such that his possession could

be said to be mitigated by the sort of provocation and passion that voluntary manslaughter involves. Instead, appellant testified that he acquired the gun that he used to kill the victim "maybe five days" before the shooting. Appellant testified that the gun likely had been in his pants from the previous day when he got dressed on the morning of the shooting.

Therefore, the Court concluded, the facts of this case did not approach those that it has suggested might justify entering a conviction of voluntary manslaughter even where, based on the same killing, a jury also has found the defendant guilty of felony murder predicated on unlawful possession of a firearm by a convicted felon. Accordingly, the trial court did not err in entering a judgment of conviction on the jury's verdict finding appellant guilty of felony murder and sentencing him accordingly.

Motions for Continuance; Requests for Speedy Trial

Phoenix v. State, S18A1439 (12/10/18)

Appellant was convicted of malice murder, aggravated assault, felony murder predicated on aggravated assault, and obstruction of an officer. He argued that the trial court abused its discretion in denying his motion for a continuance. The Court disagreed.

The record showed that on June 12, 2014, the day after he was indicted, appellant filed a constitutional demand for speedy trial. On October 7, 2014, he filed a statutory demand for speedy trial. On October 14, the trial court ordered that jury selection be held on October 20, with the trial to commence on October 27. On October 16, appellant moved for a continuance, arguing that defense counsel lacked adequate time to prepare for trial because discovery was not received from the State until October 14 and because the State provided only partial discovery. On October 20, before jury selection commenced, appellant argued a "motion to allow adequate time prior to trial to inspect and examine photographs and test all physical evidence in this case," contending that an expert for the defense had not had an opportunity to inspect the evidence, which would significantly hamper his counsel's ability to adequately voir dire potential jurors. The trial court denied appellant's motion, finding that the defense had adequate time to inspect the evidence and noting the due diligence requirement incumbent upon any defendant who files a speedy trial motion. Appellant then argued for a continuance, again contending that he lacked the time necessary to allow an expert for the defense to test physical evidence. The trial court also denied this motion, explaining that it "has obligations and responsibilities for speedy trials . . . [and] the State has complied with the discovery." Appellant renewed his motion for continuance on multiple occasions during the trial, and the trial court denied these motions each time.

Appellant contended that the trial court's denial of his motion for continuance stemmed from a misunderstanding of the law. Specifically, appellant argued that the trial court "repeatedly proposed" that appellant affirmatively withdraw his speedy trial demand and refused to consider his motion for continuance absent such action. However, the Court found, the record showed that the trial court considered numerous factors in denying appellant's motion, including the State's timely compliance with appellant's discovery requests, the district attorney's open file policy, and the fact that, when appellant's case appeared on an earlier trial calendar, his counsel requested a continuance but filed a speedy trial request the very next day. The trial court also correctly noted the due diligence incumbent upon a party seeking a continuance. Under these circumstances, the Court could not conclude that the trial court abused its discretion.

Alternatively, Appellant argued that the trial court improperly based its denial of his motion for continuance on the unspecified conduct of his counsel, contending that the trial court should have considered only the conduct of appellant himself. But, the Court stated, even if were determined the trial court abused its discretion in denying the motion for continuance, appellant made no showing of harmful error. Although appellant argued that the continuance was necessary to allow an expert the time to formulate an effective defense, he made no showing as to who the expert would be, what his or her testimony would be expected to show, or how that testimony would have benefited him. Moreover, the Court found, there was overwhelming evidence of appellant's guilt.

Armed Robbery; Sufficiency of the Evidence

Robinson v. State, A18A1693 (12/4/18)

Appellant was convicted of six counts of armed robbery, one count of criminal attempt to commit armed robbery, seven counts of possession of a firearm during the commission of a crime, and two counts of hijacking a motor vehicle. The evidence, briefly stated, showed that appellant and two others committed armed robbery of an owner of a convenience store. They stole jewelry, cash, and cell phones from several of the victims, including the owner. They also took the car keys of two vehicles parked outside and drove off in those two vehicles. Appellant was not identified in a photo line-up and his fingerprints and DNA were not found at the crime scene or in the stolen vehicles. However, appellant sold jewelry the next day to a person named Carter and some of the jewelry that was taken in the robbery was eventually given back to the owner. Appellant also allegedly called a juvenile justice employee from the owner's cell phone on the day after the robbery.

Appellant contended that the evidence was insufficient to support his convictions. The Court agreed and reversed.

The Court stated that although there is still validity to the long-established rule that proof of recent, unexplained possession of stolen goods by a defendant is sufficient to create an inference that the defendant is guilty of the robbery of the goods, proof of recent, unexplained possession is not automatically sufficient to support a conviction for armed robbery. Here, the evidence as to appellant's unexplained possession of stolen goods following the armed robbery was Carter's testimony that he bought a couple of rings and a bracelet from appellant while several individuals were present on the morning after the robbery. Additionally, although the victim testified that he had rings stolen during the robbery, he heard from a friend that Carter had his jewelry, and some of his jewelry was eventually returned, neither the jewelry nor any photographs of the jewelry were introduced into evidence. The investigator testified that he recovered the jewelry from Carter and that he returned the jewelry to the owner's daughter-in-law. The investigator did not testify that the victim positively identified the exact jewelry obtained from Carter as his jewelry that was stolen in the robbery.

The Court noted that the only other evidence offered against appellant was that on the day after the robbery he had a meeting with a juvenile justice employee and that the employee received a call from what he presumed was the owner's phone number. The employee testified that he did not know who called him from that phone number and that he did not know what the phone number was. There was also testimony that appellant was five feet, three inches tall and known as "Little James" and that the gunman was short.

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

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The Court found that premitting whether the State established that appellant was in recent possession of the stolen jewelry, the evidence was not strong enough to establish the crimes charged beyond a reasonable doubt. To establish beyond a reasonable doubt that appellant was one of the men who committed the crimes charged, there simply must be more evidence than that he was short, another suspect's testimony that he recently possessed stolen property, and testimony about a suspicious phone call. At best, the Court held, the evidence raises a suspicion, but a conviction cannot rest upon mere suspicion. Accordingly, appellant's convictions were reversed.