

SUPREME COURT OF GEORGIA

Pennie v. State

292 Ga. 249 (2013) · Decided January 7, 2013

SUMMARY

The Supreme Court of Georgia affirmed the denial of Ntyono Pennie’s motion for a new trial following his convictions for felony murder and other offenses. The court held that counsel was not ineffective for failing to request a separate proximate-cause instruction because the jury charges were sufficient, the decision was not patently unreasonable, and Pennie could not establish prejudice under Strickland.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Justice
JURISDICTION	Georgia
DECIDED	January 7, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pennie appealed the denial of his amended motion for a new trial, which alleged ineffective assistance of trial counsel based on counsel's failure to request a separate jury instruction on proximate causation.
STANDARD OF REVIEW	Ineffective-assistance claims are evaluated under Strickland v. Washington, requiring proof of deficient performance and resulting prejudice. A tactical decision concerning a jury-charge request warrants substantial latitude and does not support reversal unless it was so patently unreasonable that no competent attorney would have made it.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; binding Georgia precedent.
PARTIES	Ntyono Pennie v. State of Georgia

TOPICS

ineffective assistance

jury instructions

criminal procedure

lesser included offense instructions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by failing to request a separate jury instruction on proximate causation.
2. Whether the jury instructions, considered as a whole, sufficiently required the jury to find that Pennie caused or was a party with Sanders in causing Akins's death during the escape phase of the underlying felonies.
3. Whether Pennie established prejudice from counsel's failure to request a separate proximate-cause instruction.

HOLDINGS

1. The jury instructions, considered as a whole, were sufficient to inform the jury that it had to determine that Pennie caused or was a party with Sanders in causing Akins's death during the escape phase of the underlying felonies.
2. Counsel's decision not to request a separate proximate-causation instruction was not deficient performance because it was a tactical decision that was not patently unreasonable.
3. Pennie failed to establish a reasonable probability that a separate proximate-cause instruction would have produced a different verdict.

KEY QUOTATIONS

“Considered as a whole, these charges were sufficient to inform the jury that, in order to convict Appellant of the felony murder of Akins, it had to determine that he caused or was a party with Sanders in causing the victim’s death during the escape phase of the underlying felonies.” (252)

“Accordingly, Appellant has failed to establish both that trial counsel’s performance was deficient and that he was prejudiced by counsel’s performance, and the trial court properly denied his motion for a new trial.” (253)

FACTUAL BACKGROUND

Pennie and Sanders committed armed robberies at an apartment complex, and Pennie shot one of the victims. Pennie then directed Sanders to retrieve an escape vehicle, and both men fled in the vehicle when police attempted to stop them. During the ensuing high-speed pursuit, the vehicle ran a red light and collided with Shirley Akins's car, killing her; Pennie fled on foot after the collision and was apprehended.

PROCEDURAL HISTORY

Pennie and co-defendant Torrence Sanders were indicted in Rockdale County for felony murder and related offenses arising from armed robberies and the death of Shirley Akins during a police pursuit. A jury convicted Pennie on all counts, and the trial court imposed life without parole for felony murder along with additional

sentences. After the trial court denied Pennie's amended motion for a new trial alleging ineffective assistance, Pennie appealed to the Supreme Court of Georgia, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Sanders v. State, 290 Ga. 637, 637-638 (723 SE2d 436) (2012)
- Jackson v. Virginia, 443 U.S. 307, 319 (1979)
- State v. Jackson, 287 Ga. 646, 648 (697 SE2d 757) (2010)
- Strickland v. Washington, 466 U.S. 668, 687, 694 (1984)
- Long v. State, 287 Ga. 886, 891 (700 SE2d 399) (2010)
- Westmoreland v. State, 287 Ga. 688, 689 (699 SE2d 13) (2010)
- Sigman v. State, 287 Ga. 220, 221 (695 SE2d 232) (2010)
- Hill v. State, 290 Ga. 493, 500 (722 SE2d 708) (2012)

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