

GA.

Allen v. State

No. S23A0436, Ga. (July 5, 2023)

SUMMARY

The Supreme Court of Georgia affirmed Allen's felony murder conviction, holding that the trial court properly denied his pretrial immunity claim under OCGA § 16-3-24.2 because the video evidence authorized the finding that the victim had lowered his gun before Allen shot him, and the court was not required to credit Allen's self-serving testimony. The evidence was sufficient to support the conviction, as the jury could reject self-defense based on testimony that Allen threatened the victim and video showing the victim lowered his weapon. Any error in limiting defense counsel's closing argument by preventing him from reading the jury charge on self-defense was harmless because the court later gave the same instructions. Allen's ineffective assistance claims failed for lack of prejudice (mental health evaluation, video expert, missing witness) or were not preserved (directed verdict motion).

CASE DETAILS

COURT	Ga.
WRITING FOR THE COURT	Peterson, Presiding Justice; All the Justices concurred
JURISDICTION	Georgia
DECIDED	July 5, 2023
DOCKET	S23A0436
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from denial of motion for new trial after conviction for felony murder.
STANDARD OF REVIEW	For immunity: evidence viewed in light most favorable to trial court's ruling, accepting factual findings if supported by any evidence, but facts from video may be reviewed de novo. For sufficiency: Jackson v. Virginia standard. For ineffective assistance: Strickland v. Washington standard.
PRECEDENTIAL VALUE	Published
PARTIES	Sean Allen v. The State

TOPICS

criminal procedure

self defense

evidence

ineffective assistance

appellate procedure

PRACTICE AREAS

Criminal Law

QUESTIONS PRESENTED

1. Whether the trial court erred in denying Allen's motion for immunity from prosecution based on self-defense.
2. Whether the evidence was sufficient to support the felony murder conviction.
3. Whether the trial court erred by limiting defense counsel's ability to argue the law of self-defense in closing argument.
4. Whether trial counsel was ineffective in several respects: failing to obtain a mental health evaluation, failing to secure a videography expert, failing to meet with or subpoena a witness, failing to object to the trial court's interruption of closing argument, and failing to timely move for a directed verdict.

KEY QUOTATIONS

“To establish justification for killing another, a defendant must show the circumstances were such as to excite the fears of a reasonable person that he or a third person faced death or great bodily injury; in other words, a defendant must show that his fear was objectively reasonable.”

“To prevail on a motion for immunity under OCGA § 16-3-24.2, a defendant must establish his justification defense by a preponderance of the evidence.”

“When a defendant presents evidence that he was justified in using deadly force, the State bears the burden of disproving the defense beyond a reasonable doubt.”

“A nonconstitutional error is harmless if the State shows that it is highly probable that the error did not contribute to the verdict.”

“To succeed on his claim of ineffective assistance of counsel, Allen must show that counsel's performance was deficient and that counsel's deficient performance prejudiced Allen's defense.”

“It is not enough to show merely that counsel unreasonably failed to inquire into Appellant's mental state — he must show a reasonable probability that such an evaluation would have affected the outcome at trial.”

“In assessing the prejudicial effect of counsel's failure to call a witness (whether that failure resulted from a tactical decision, negligent oversight, or otherwise), a petitioner is required to make an affirmative showing that specifically demonstrates how counsel's failure would have affected the outcome of his case.”

FACTUAL BACKGROUND

On May 7, 2021, Sean Allen shot and killed Daquan Gillett at a Fayette County park. The incident began when Allen approached a group of teenagers, including Daquan and his twin brother Davon, who were playing with water guns. A verbal exchange escalated into a physical altercation. During the fight, Allen's gun fell to the

ground, and Daquan picked it up. Davon put Allen in a chokehold. After being released, Allen retrieved a gun from a friend and shot Daquan, who was partially hidden between cars. The medical examiner testified that Daquan died from gunshot wounds to the back of the head and left thigh.

PROCEDURAL HISTORY

Allen was indicted for malice murder, felony murder, and aggravated assault. At trial, the jury found him not guilty of malice murder but guilty of felony murder and aggravated assault. The trial court sentenced him to life in prison. Allen filed a motion for new trial, which was denied. He appealed to the Supreme Court of Georgia.

DISPOSITION

affirmed

CITED IN

- Allen v. State, Allen v. State, 317 Ga. 1, 12-13 (2023)
- Allen v. State, Allen v. State, 317 Ga. 1, 8 (2023)
- Allen v. State, Allen v. State, 317 Ga. 1, 5-6 (2023)