

SUPREME COURT OF GEORGIA

Bowling v. State, 289 Ga. 881

717 S.E.2d 190 (2011) · No. S11A1014 · Decided October 17, 2011

SUMMARY

The Supreme Court of Georgia affirmed Larry Bowling’s convictions for felony murder and aggravated assault arising from the shooting death of Melody Harrell. The court upheld the search warrant and admission of Bowling’s medical records, rejected his Fifth Amendment, Confrontation Clause, and Miranda challenges, and found any error in admitting one custodial statement harmless. The court also held that counsel was not ineffective for declining to file an out-of-time speedy-trial demand while continuing an investigation.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hunstein, Chief Justice; All the Justices
JURISDICTION	Georgia
DECIDED	October 17, 2011
DOCKET	S11A1014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the denial of a motion for new trial following convictions for felony murder and aggravated assault.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether, viewing the evidence in the light most favorable to the verdict, a rational trier of fact could find guilt beyond a reasonable doubt. Miranda, evidentiary, constitutional, and ineffective-assistance claims were reviewed under the applicable constitutional and legal standards; the ineffective-assistance claim required deficient performance and resulting prejudice under Strickland.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Georgia
PARTIES	Larry Bowling v. The State

TOPICS

criminal procedure

search and seizure

fourth amendment

miranda rights

ineffective assistance

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the search warrant for Bowling's medical records violated the Fourth Amendment or the Georgia Constitution.
2. Whether the medical records were protected from disclosure under the Fifth Amendment privilege against self-incrimination.
3. Whether the warrant was overbroad and whether the medical records were relevant and admissible.
4. Whether admission of the medical records violated the Sixth Amendment Confrontation Clause.
5. Whether statements Bowling made at the crime scene and hospital before receiving Miranda warnings were inadmissible.
6. Whether trial counsel rendered ineffective assistance by failing to file an out-of-time statutory demand for a speedy trial.
7. Whether the evidence was sufficient to support the convictions.

HOLDINGS

1. The search and seizure of Bowling's medical records pursuant to a valid warrant did not violate the Fourth Amendment or the Georgia Constitution. Bowling could not claim a reasonable expectation of privacy in information disclosed in the presence of officers, and a valid warrant supplied the constitutionally required balance between privacy and governmental need.
2. The Fifth Amendment did not bar admission of Bowling's medical records or the results of blood and urine testing. The privilege protects against compelled testimonial or communicative evidence, not physical evidence such as chemically analyzed blood and urine, and Bowling identified no coercive police activity causing his disclosures or consent.
3. The warrant was not overbroad, and the medical records were relevant and admissible. The warrant was narrowly limited to records concerning Bowling's examination, treatment, and care on the date of the crimes, and evidence of his drug and alcohol use was relevant to his state of mind.
4. Admission of Bowling's medical records did not violate the Sixth Amendment Confrontation Clause because the treating physician testified and was subject to cross-examination, and the records were nontestimonial treatment records created primarily to facilitate medical care.
5. Bowling's initial responses to Shapiro were admissible because Bowling was not in custody when those questions were asked. After custody attached, questions concerning the location of the missing gun were permissible under the public-safety exception to Miranda. Unsolicited statements were admissible as spontaneous statements. Although Killian's broader question about what happened was not within the public-safety exception, admission of Bowling's response was harmless beyond a reasonable doubt because it was cumulative.

6. Bowling's voluntary, unsolicited statements made to or in the presence of investigators at the hospital were properly admitted.
7. Trial counsel was not ineffective for strategically declining to file an out-of-time speedy-trial demand while continuing an investigation for defense witnesses. The decision was reasonable trial strategy and did not establish deficient performance.
8. The evidence was sufficient to authorize the jury to find Bowling guilty beyond a reasonable doubt of felony murder and aggravated assault.

KEY QUOTATIONS

“When the State's reason to believe incriminating evidence will be found becomes sufficiently great, the invasion of privacy becomes justified and a warrant . . . will issue.” (289 Ga. at 884; 717 S.E.2d at 195)

“police officers ask questions reasonably prompted by a concern for public safety.” (289 Ga. at 888; 717 S.E.2d at 198)

“The decision to file a speedy trial demand is usually tactical in nature.” (289 Ga. at 889; 717 S.E.2d at 199)

FACTUAL BACKGROUND

After drinking at a bar, Bowling left in a van driven by Melody Harrell. Police later found the van crashed into a house and Bowling standing over Harrell, who had suffered a fatal gunshot wound. Bowling repeatedly told officers and medical personnel that the shooting was accidental, while later testimony from a witness described Bowling as intentionally turning the gun toward Harrell. Medical testing showed alcohol and multiple drugs in Bowling's system.

PROCEDURAL HISTORY

A Gwinnett County grand jury indicted Bowling for malice murder, felony murder, and aggravated assault. Following a jury trial, he was convicted of felony murder and aggravated assault, acquitted of malice murder, and sentenced to life imprisonment after the aggravated-assault conviction was merged into the felony-murder conviction. The trial court denied his motion for new trial, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- City of Ontario, Cal. v. Quon, 130 S. Ct. 2619, 177 L. Ed. 2d 216 (2010)
- King v. State, 272 Ga. 788, 535 S.E.2d 492 (2000)
- Kyllo v. United States, 533 U.S. 27, 33, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001)
- Espinoza v. State, 265 Ga. 171, 454 S.E.2d 765 (1995)
- Thomas v. State, 263 Ga. 85, 428 S.E.2d 564 (1993)

- Cooper v. State, 277 Ga. 282, 286, 587 S.E.2d 605 (2003)
- King v. State, 276 Ga. 126, 128-129, 577 S.E.2d 764 (2003)
- Warden v. Hayden, 387 U.S. 294, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967)
- Brogdon v. State, 287 Ga. 528, 532-534, 697 S.E.2d 211 (2010)
- Boyd v. United States, 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746 (1886)
- Schmerber v. California, 384 U.S. 757, 761, 765, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)
- United States v. Romero, 897 F.2d 47, 52, 2d Cir. 1990
- Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)
- Michigan v. Bryant, 131 S. Ct. 1143, 1155-1156, 179 L. Ed. 2d 93 (2011)
- McKnight v. State, 283 Ga. 56, 656 S.E.2d 830 (2008)
- Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2533 n. 2, 2542, 174 L. Ed. 2d 314 (2009)
- Massachusetts v. Dyer, 77 Mass. App. Ct. 850, 934 N.E.2d 293, 298 (2010)
- Heckman v. State, 276 Ga. 141, 143, 576 S.E.2d 834 (2003)
- Gabriel v. State, 280 Ga. 237, 626 S.E.2d 491 (2006)
- New York v. Quarles, 467 U.S. 649, 656-659, 104 S. Ct. 2626, 81 L. Ed. 2d 550 (1984)
- Smith v. State, 264 Ga. 857, 452 S.E.2d 494 (1995)
- Hatcher v. State, 286 Ga. 491, 493-494, 690 S.E.2d 174 (2010)
- Frazier v. State, 278 Ga. 297, 602 S.E.2d 588 (2004)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Napier v. State, 276 Ga. 769, 776, 583 S.E.2d 825 (2003)
- Johnson v. State, 286 Ga. 787, 692 S.E.2d 575 (2010)
- Bowling v. State, 285 Ga. 43, 673 S.E.2d 194 (2009)

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