

SUPREME COURT OF GEORGIA

Horne v. State

281 Ga. 799 (2007) · No. S06A1791 · Decided March 19, 2007

SUMMARY

The Supreme Court of Georgia affirmed Derek Horne's convictions for malice murder and related offenses arising from an armed robbery and fatal shooting. The court held that the evidence was sufficient, rejected Horne's ineffective-assistance, gang-affiliation, and independent-act evidentiary claims, and found a Confrontation Clause violation from the prosecutor's leading questions to an immunized co-indictee who refused to testify. The constitutional error was deemed harmless beyond a reasonable doubt.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	March 19, 2007
DOCKET	S06A1791
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions following a jury trial and the denial of a motion for new trial.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether a rational trier of fact could find guilt beyond a reasonable doubt, viewing the evidence in the light most favorable to the verdict. Findings on ineffective assistance of counsel are affirmed unless clearly erroneous. Evidentiary rulings are reviewed for abuse of discretion. A federal constitutional error is harmless only if the State proves beyond a reasonable doubt that it did not contribute to the verdict.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia.
PARTIES	Derek Horne v. The State

TOPICS

- criminal procedure
- sixth amendment
- ineffective assistance
- evidence
- harmless error

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Horne's convictions despite his claim that it was circumstantial and failed to exclude every reasonable hypothesis other than guilt.
2. Whether trial counsel rendered ineffective assistance by failing to seek severance of certain charges, failing to present alibi evidence, and failing to move to suppress evidence seized from Horne's residence.
3. Whether the trial court abused its discretion by admitting writings associated with gang activity to show intent, state of mind, and use of the weapon.
4. Whether the trial court abused its discretion by admitting evidence of a prior armed robbery as an independent act and as proof of theft by receiving stolen property.
5. Whether the prosecutor's leading questions to an immune co-indictee who refused to testify violated Horne's Sixth Amendment right of confrontation and, if so, whether the error was harmless beyond a reasonable doubt.

HOLDINGS

1. The evidence was sufficient to enable a rational trier of fact to find Horne guilty beyond a reasonable doubt of the charged crimes.
2. Horne failed to establish constitutionally ineffective assistance of trial counsel.
3. The trial court did not abuse its discretion by admitting writings seized from Horne's jail cell and residence as relevant evidence of the weapon's use, the manner of the shooting, intent, and state of mind.
4. The trial court did not abuse its discretion by admitting evidence of Horne's prior armed robbery as independent-act evidence and as proof of the charged theft-by-receiving offense.
5. The prosecutor's leading questions to Hill, an immune co-indictee who refused to testify, violated Horne's Sixth Amendment right of confrontation, but the violation was harmless beyond a reasonable doubt.

KEY QUOTATIONS

“the undeniable effect of this prosecutorial procedure was to place before the jury, through the questions asked, the content of [the witness'] statement to the police, and the clear inference [of the defendant's guilt].”
(at 667)

“While the prosecutor's questioning of Hill was clearly impermissible, it was not evidence and it added nothing of material value that had not otherwise been properly presented to the jury.” (at 668)

FACTUAL BACKGROUND

Horne and co-indictee Charles Hill robbed a Church's Fried Chicken store while armed and wearing masks. During the escape, Horne pursued employee Sean Abraham, held a gun to his head, forced him to his knees, and

shot him; Horne then took Abraham's cellular phone. An eyewitness identified Horne, and police later seized clothing consistent with the perpetrators' clothing, drugs, and property connected to another robbery from Horne's residence. At trial, Hill, who had received immunity, refused to answer the prosecutor's questions, including 117 leading questions recounting Hill's alleged statements implicating Horne.

PROCEDURAL HISTORY

Horne was convicted by a jury of malice murder and numerous other offenses arising from an armed robbery and fatal shooting. The trial court denied his amended motion for new trial. Horne appealed, challenging the sufficiency of the evidence, the effectiveness of trial counsel, the admission of writings and independent-act evidence, and the prosecutor's questioning of an immune co-indictee who refused to testify.

DISPOSITION

affirmed

CASES CITED

- Smith v. State, 280 Ga. 161, 162(1), 625 S.E.2d 766 (2006)
- Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)
- Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- Smith v. Francis, 253 Ga. 782(1), 325 S.E.2d 362 (1985)
- Domingues v. State, 277 Ga. 373, 374(2), 589 S.E.2d 102 (2003)
- Walker v. State, 281 Ga. 521, 640 S.E.2d 274 (2007)
- Parker v. State, 281 Ga. 490, 640 S.E.2d 44 (2007)
- Ramirez v. State, 279 Ga. 569(9), 619 S.E.2d 668 (2005)
- Wolfe v. State, 273 Ga. 670, 674(4)(c), 544 S.E.2d 148 (2001)
- Williams v. State, 261 Ga. 640(2), 409 S.E.2d 649 (1991)
- Beasley v. State, 269 Ga. 620(4), 502 S.E.2d 235 (1998)
- Grimes v. State, 280 Ga. 363(6), 628 S.E.2d 580 (2006)
- Lingerfelt v. State, 235 Ga. 139, 218 S.E.2d 752 (1975)
- Lingerfelt v. State, 231 Ga. 354(3), 201 S.E.2d 445 (1973)
- Lawrence v. State, 257 Ga. 423(3), 360 S.E.2d 716 (1987)
- Greenwood v. State, 203 Ga.App. 901(1), 418 S.E.2d 160 (1992)
- Douglas v. Alabama, 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965)
- Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)
- State v. Hightower, 236 Ga. 58, 61, 222 S.E.2d 333 (1976)
- Jones v. State, 265 Ga. 84, 86(4), 453 S.E.2d 716 (1995)
- Haynes v. State, 269 Ga. 181(2), 496 S.E.2d 721 (1998)
- Roseberry v. State, 274 Ga. 301(3), 553 S.E.2d 589 (2001)

- Hill v. State, ____ Ga. ____, 642 S.E.2d 64 (2007)
- Willard v. State, 244 Ga.App. 469, 470(1)(a), 535 S.E.2d 820 (2000)
- Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968)

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