

SUPREME COURT OF GEORGIA

Cornell v. State, 277 Ga. 228

587 S.E.2d 652 (2003) · No. S03A0820 · Decided October 20, 2003

SUMMARY

The Supreme Court of Georgia affirmed Wilmer Cornell’s convictions for malice murder and possession of a firearm during the commission of a felony. The court held that trial counsel was not ineffective for failing to request an accident instruction or present a firearms expert, and it rejected claims concerning the admission of a victim photograph and the aggravated-assault jury charge.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Fletcher, Chief Justice
JURISDICTION	Georgia
DECIDED	October 20, 2003
DOCKET	S03A0820
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cornell appealed his convictions for malice murder and possession of a firearm during the commission of a felony, asserting ineffective assistance of trial counsel and evidentiary and jury-instruction errors.
STANDARD OF REVIEW	The sufficiency of the evidence was reviewed under whether a rational trier of fact could find guilt beyond a reasonable doubt. Ineffective-assistance claims were evaluated under the deficiency-and-prejudice standard. Admission of the photograph was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Georgia.
PARTIES	Wilmer Cornell v. The State

TOPICS

- ineffective assistance
- criminal procedure
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Cornell's convictions for malice murder and possession of a firearm during the commission of a felony.
2. Whether trial counsel was ineffective for failing to request a jury instruction on accident.
3. Whether trial counsel was ineffective for failing to present an expert witness to refute the State's firearm expert.
4. Whether the trial court erred by admitting a photograph of the victim taken during life.
5. Whether the jury instruction on aggravated assault was reversible error when the aggravated-assault conviction merged into the malice-murder conviction and Cornell was not sentenced on aggravated assault.

HOLDINGS

1. The evidence was sufficient for a rational trier of fact to find Cornell guilty beyond a reasonable doubt of the crimes for which he was convicted.
2. Counsel was not ineffective for failing to request an accident instruction because the evidence did not support an accident defense; intentionally firing a gun at the victim does not invoke accident even if the defendant intended only to scare or drive the victim back.
3. Counsel was not ineffective for choosing to cross-examine the State's firearm expert rather than presenting a defense expert because the choice was not patently unreasonable.
4. The trial court did not abuse its discretion by admitting a photograph of the victim taken during life because such photographs are admissible for comparison with postmortem photographs to establish the victim's identity.
5. The challenge to the aggravated-assault instruction was moot because the aggravated-assault conviction merged into the malice-murder conviction as a matter of fact, and Cornell was not sentenced on aggravated assault or on any count relying on it.

KEY QUOTATIONS

"Cornell's intentional firing of the gun at the victim, even if only intended to scare the victim and "back him off," does not invoke the defense of accident." (654)

"Counsel's "decision to avoid the battle of the experts and rely upon cross-examination of the State's experts" is an acceptable tactic if not "patently unreasonable."" (654)

FACTUAL BACKGROUND

After the victim fought with Cornell's brother outside a strip club, Cornell obtained a gun and joined his brother in searching for the victim. Cornell testified that the victim ran toward them and pulled up his shirt, causing

Cornell to believe the victim had a gun; Cornell then shot the victim in the chest. Witnesses testified that Cornell threatened the victim beforehand and stood over him preparing to shoot again before being dissuaded.

PROCEDURAL HISTORY

Cornell was indicted in Fulton County on malice murder, felony murder, aggravated assault, and possession of a firearm during the commission of a felony. A jury convicted him on all counts on October 18, 2001; the felony-murder conviction was vacated by operation of law, and he received life imprisonment for malice murder plus five consecutive years for firearm possession. His amended motion for new trial was denied, 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)
- Strickland v. Washington, 466 U.S. 668, 687, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Berry v. State, 267 Ga. 476, 478, 480 S.E.2d 32 (1997)
- Scott v. State, 261 Ga. 611, 612, 409 S.E.2d 511 (1991)
- Canada v. State, 275 Ga. 131, 133, 562 S.E.2d 508 (2002)
- Davis v. State, 255 Ga. 598, 606, 340 S.E.2d 869 (1986)