

SUPREME COURT OF GEORGIA

Devega v. State, 286 Ga. 448

689 S.E.2d 293 (2010) · No. S09A2064 · Decided February 1, 2010

SUMMARY

The Supreme Court of Georgia affirmed Robert Bella Devega III's convictions and sentences for malice murder, a drug offense, and a weapons offense. The court rejected challenges involving warrantless cellular-phone location tracking, hearsay under the necessity exception, the legality of the arrest and vehicle seizure, custodial statements, search and arrest warrants, and ineffective assistance of counsel. The court held that the trial court committed no reversible error and affirmed the judgment.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Presiding Justice; All the Justices
JURISDICTION	Georgia
DECIDED	February 1, 2010
DOCKET	S09A2064
DISPOSITION	affirmed
PROCEDURAL POSTURE	Devega appealed his convictions and sentences, and the denial of his motion for new trial, to the Supreme Court of Georgia.
STANDARD OF REVIEW	Sufficiency of the evidence was reviewed under whether a rational trier of fact could find guilt beyond a reasonable doubt. Waived or unpreserved claims were not reviewed. The trial court's factual findings on ineffective assistance were accepted unless clearly erroneous, while legal conclusions were reviewed de novo. Evidentiary trustworthiness determinations under the necessity exception were reviewed for abuse of discretion; custodial-statement findings were reviewed for clear error.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Robert Bella Devega, III v. The State

TOPICS

criminal procedure

search and seizure

fourth amendment

hearsay

ineffective assistance

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Devega's convictions.
2. Whether the warrantless cellular-phone location request violated the Fourth Amendment.
3. Whether hearsay testimony concerning statements made by the deceased victim was admissible under Georgia's necessity exception.
4. Whether trial counsel rendered ineffective assistance by failing to investigate psychiatric records, challenge the arrest and vehicle seizure, challenge the cellular-phone location request, challenge the custodial statement, challenge alleged misinformation in warrant affidavits, or otherwise litigate the stated issues.
5. Whether the trial court's incomplete statement of the prejudice standard in its new-trial order required reversal.

HOLDINGS

1. The evidence, construed most strongly in support of the verdicts, was sufficient for a rational trier of fact to find Devega guilty beyond a reasonable doubt of the offenses for which he was convicted.
2. Warrantless monitoring of a cellular phone's location while the phone was traveling in a car on public roads did not violate the Fourth Amendment because it revealed no information beyond what visual surveillance could have revealed and the defendant had no reasonable expectation of privacy in those movements.
3. The trial court did not abuse its discretion by admitting testimony concerning the deceased victim's statements under the necessity exception.
4. Devega failed to establish ineffective assistance of counsel because he did not show deficient performance and resulting prejudice, and each asserted deficiency either lacked factual support, involved a meritless issue, or did not affect the outcome.
5. The trial court's incomplete recitation of the prejudice standard in its order denying a new trial did not require reversal because the Supreme Court applied the correct standard in conducting its de novo review and found the ineffective-assistance claims meritless.

KEY QUOTATIONS

"A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." (at 300)

"In order for hearsay to be admitted under the necessity exception, two requirements must be satisfied: 'necessity' and 'particularized guarantees of trustworthiness.'" (at 297)

FACTUAL BACKGROUND

Devega arranged to sell a quarter kilogram of cocaine to Saifullah Afzal for \$5,000. At the arranged meeting, Devega intentionally shot Afzal nine times with two handguns. Investigators obtained information linking Devega to the drug transaction, located him through a warrantless cellular-phone location request, and arrested him; the case also involved statements by the victim, a vehicle seizure, custodial statements, and arrest and search warrants.

PROCEDURAL HISTORY

A jury found Devega guilty of malice murder, two counts of felony murder, two counts of aggravated assault, possession of a firearm during the commission of a felony, and conspiracy to sell a controlled substance. The trial court sentenced him to life imprisonment for malice murder and consecutive terms of ten years for the drug offense and five years for the weapons offense; the felony-murder verdicts were vacated by operation of law and the aggravated-assault verdicts merged into the malice-murder conviction. The trial court denied his amended motion for new trial, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- *Malcolm v. State*, 263 Ga. 369, 372(4)(5), 434 S.E.2d 479 (1993)
- *Jackson v. Virginia*, 443 U.S. 307 (1979)
- *Judkins v. State*, 282 Ga. 580, 582(2), 652 S.E.2d 537 (2007)
- *Watson v. State*, 278 Ga. 763, 765(2)(a), 604 S.E.2d 804 (2004)
- *Demons v. State*, 277 Ga. 724, 727(4), 595 S.E.2d 76 (2004)
- *Campos v. State*, 273 Ga. 119, 121(2), 538 S.E.2d 447 (2000)
- *Reaves v. State*, 242 Ga. 542, 551(6), 250 S.E.2d 376 (1978)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *Hill v. State*, 284 Ga. 521, 522(2), 668 S.E.2d 673 (2008)
- *King v. State*, 282 Ga. 505, 506(2), 651 S.E.2d 711 (2007)
- *Haygood v. State*, 289 Ga. App. 187, 193(2)(a), 656 S.E.2d 541 (2008)
- *Jennings v. State*, 282 Ga. 679, 680(2), 653 S.E.2d 17 (2007)
- *Cormier v. State*, 277 Ga. 607, 609(2)(a), 592 S.E.2d 841 (2004)
- *Martin v. Barrett*, 279 Ga. 593, 595-596, 619 S.E.2d 656 (2005)
- *Brown v. State*, 262 Ga. 728, 729(2)(a), 425 S.E.2d 856 (1993)
- *State v. Bryant*, 284 Ga. App. 867, 870, 644 S.E.2d 871 (2007)
- *Pittman v. State*, 277 Ga. 475, 479(4), 592 S.E.2d 72 (2004)
- *State v. Giangregorio*, 181 Ga. App. 324, 325, 352 S.E.2d 193 (1986)
- *Jackson v. State*, 183 Ga. App. 594, 595, 359 S.E.2d 457 (1987)
- *Dobbins v. State*, 114 Ga. App. 403, 151 S.E.2d 549 (1966)

- Martin v. State, 281 Ga. 778, 781(3)(a), 642 S.E.2d 837 (2007)
- Teal v. State, 282 Ga. 319, 328(4), 647 S.E.2d 15 (2007)
- United States v. Karo, 468 U.S. 705 (1984)
- United States v. Knotts, 460 U.S. 276 (1983)
- Stone v. State, 178 Md. App. 428, 941 A.2d 1238 (2008)
- Taylor v. State, 274 Ga. 269, 271-272(1), 553 S.E.2d 598 (2001)
- Prince v. State, 277 Ga. 230, 232(2), 587 S.E.2d 637 (2003)
- Franks v. Delaware, 438 U.S. 154 (1978)
- Williams v. State, 251 Ga. 749, 796, 312 S.E.2d 40 (1983)
- Stanford v. State, 272 Ga. 267, 271(10), 528 S.E.2d 246 (2000)
- Miller v. State, 285 Ga. 285, 287, 676 S.E.2d 173 (2009)

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