

SUPREME COURT OF GEORGIA

Delaney v. State, 304 Ga. 256

818 S.E.2d 559 (2018) · Decided August 20, 2018

SUMMARY

The Georgia Supreme Court affirmed Raven Marie Delaney's convictions for malice murder and related offenses arising from the shooting deaths of two men. The court held that trial counsel was not ineffective for failing to object to testimony regarding a co-defendant's polygraph examinations because counsel used the testimony to support the defense theory that the co-defendant was the actual murderer.

OPINION

HUNSTEIN, J.

Hunstein, Justice. *560**256Appellant Raven Marie Delaney was convicted of malice murder and related offenses arising from the shooting deaths of John Evans and Robert Holcomb.¹ On appeal, Appellant contends that trial counsel rendered constitutionally ineffective assistance; finding no error, we affirm. Viewing the evidence in a light most favorable to the verdicts, the evidence adduced at trial established as follows.

The victims, Evans and Holcomb, lived in a trailer in Catoosa County, Georgia, where they sold methamphetamine. On the night of April 5, 2004, a number of individuals gathered with the two men at the trailer, including Appellant, Josh Rood, and Lindsey Stamey. During the gathering, Appellant asked Stamey if she wanted to help "roll"-or rob-the victims; Stamey declined the offer, reported the odd request to her **257mother, and eventually went home.

At some point, Appellant was left as the only remaining guest in the victims' residence. In the early morning hours of April 6, 2004, Appellant called Rood numerous times seeking his help with robbing the victims, but Rood, too, declined to get involved. Hours later, Appellant arrived at Rood's location driving Evans' van; once there, Appellant admitted to Rood that she had shot Evans and Holcomb, as well as stolen their methamphetamine and cash.

Appellant gave a firearm to Rood, who cleaned and hid the gun, and Rood parked Evans' van at the dead end of a nearby gravel road. Shortly thereafter, Appellant and Rood visited Stamey, at which point Appellant gave Stamey methamphetamine, free of charge. Appellant met with Stamey a second time that day-this time accompanied by her half brother, Dustin Petet-and again provided Stamey with free drugs.

The jury heard testimony that it was unusual for Appellant to give away methamphetamine. Later that evening, Evans and Holcomb were discovered shot dead in their trailer. Rood directed the investigators to the gun, which was determined to be the murder weapon. Appellant gave two statements to law enforcement.

In the first interview, she denied knowing anything about the murders; in the second statement, however, she detailed how Rood committed the murders while she was merely outside waiting for a ride. Finally, the jury heard testimony that Appellant had independently told both Petet and another man, John Paul Dover, that she had shot the victims because they had "shorted her" on drugs and that she was going to use a recent mental-health crisis to claim insanity.

1. Although Appellant does not challenge the sufficiency of the evidence, it is our customary practice in murder cases to review the record independently to determine whether the evidence was legally sufficient. Having done so, we conclude that the evidence *561as summarized above was sufficient to authorize a rational trier of fact to conclude beyond a reasonable doubt that Appellant was guilty of the crimes of which she was convicted.

See *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). 2. In her sole enumeration of error, Appellant contends that trial counsel was ineffective for failing to object when, during its case-in-chief, the State questioned one of its witnesses about Rood "passing" a polygraph examination concerning his involvement in the murders. Appellant argues that the polygraph testimony was inadmissible because it served only to bolster Rood's trial testimony and that the testimony hampered the defense's theory that Rood was the actual murderer.

This argument is without merit. To establish ineffective assistance of counsel, a defendant must show that trial counsel's performance was professionally deficient **258and that, but for such deficient performance, there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (III), 104 S.Ct.

2052, 80 L.Ed.2d 674 (1984); *Wesley v. State*, 286 Ga. 355 (3), 689 S.E.2d 280 (2010). To prove deficient performance, one must show that his attorney "performed at trial in an objectively unreasonable way considering all the circumstances and in the light of prevailing professional norms." *Romer v. State*, 293 Ga. 339, 344, 745 S.E.2d 637 (2013). "[T]o show that he was prejudiced by the performance of his lawyer, [Appellant] must prove 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Arnold v. State*, 292 Ga. 268, 269, 737 S.E.2d 98 (2013) (quoting *Strickland*, 466 U.S. at 694 (III) (B), 104 S.Ct. 2052). While Appellant asserts that trial counsel acted unreasonably in failing to

object to the polygraph-examination testimony, the record indicates that the testimony was utilized by trial counsel to support the defense's theory that Rood was the actual murderer.

Indeed, though the State adduced testimony that Rood had passed one polygraph examination, the jury also learned that Rood had been subject to an earlier polygraph that was "inconclusive." Defense counsel elicited testimony from Rood himself that the "inconclusive" result stemmed from answers concerning his involvement in the shooting; defense counsel also used this earlier polygraph examination to cast doubt on the credibility of the officer who performed the second polygraph examination, who was apparently unaware that an earlier polygraph had been administered.

In short, defense counsel used the polygraph-examination testimony to cast suspicion on Rood, the State's star witness, and cast doubt on the State's investigatory tactics. Trial counsel's decision not to object to the polygraph testimony was not unreasonable, and, thus, trial counsel did not perform deficiently in this regard. Judgment affirmed. Hines, C.J., Melton, P.J., Benham, Nahmias, Blackwell, Boggs, and Peterson, JJ., concur.

In May 2005, a Catoosa County grand jury returned a 14-count indictment charging Appellant with the shooting deaths of Evans and Holcomb. Appellant was charged with two counts of malice murder, two counts of felony murder predicated on aggravated assault, two counts of felony murder predicated on armed robbery, two counts of aggravated assault, two counts of armed robbery, and four counts of possession of a firearm during the commission of a crime (two for malice murder and two for felony murder).

Following an October 2006 trial, a jury found Appellant guilty of each offense. Appellant was sentenced to consecutive life sentences on the malice murder counts, as well as to two consecutive five-year terms for possession of a firearm during the commission of a crime, for a total sentence of life plus 10 years.

The trial court ruled that all other counts were merged or vacated by operation of law, and the State does not challenge these rulings. See *Dixon v. State*, 302 Ga. 691 (4), 808 S.E.2d 696 (2017). Appellant filed a motion for new trial in October 2006, which was amended in March 2007 and August 2016. Following a hearing, the trial court denied the motion as amended on August 25, 2016.

See *Owens v. State*, 303 Ga. 254, 811 S.E.2d 420 (2018) (reminding the bench and bar that "[w]e do not condone... inordinate delay[s] in... motion for new trial proceeding[s]," as such "delays put at risk the rights of defendants and crime victims and the validity of convictions obtained after a full trial") (citation and punctuation omitted). Appellant filed a timely notice of appeal on September 26, 2016; this case was docketed to the April 2018 term of this Court and was thereafter submitted for a decision on the briefs.

