

SUPREME COURT OF FLORIDA

Gore v. State

784 So. 2d 418 (Fla. 2001) · No. SC96127 · Decided April 19, 2001

SUMMARY

The Supreme Court of Florida affirmed Marshall Lee Gore's convictions for first-degree murder and armed robbery and his death sentence following a retrial. The court held that double jeopardy did not bar the retrial, that the trial court properly denied motions for mistrial and judgment of acquittal, and that the exclusion of reverse Williams rule evidence was not an abuse of discretion. The court also upheld the finding of the cold, calculated, and premeditated aggravating circumstance.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Wells, C.J.; Shaw, J.; Harding, J.; Anstead, J.; Pariente, J.; Lewis, J.; Quince, J.
JURISDICTION	Florida
DECIDED	April 19, 2001
DOCKET	SC96127
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a retrial judgment convicting Gore of first-degree murder and armed robbery and imposing a death sentence for the murder and an upward-departure life sentence for the armed robbery.
STANDARD OF REVIEW	Mistrial rulings are reviewed for abuse of discretion. Sufficiency of the evidence is reviewed under the competent-substantial-evidence standard, viewing the evidence in the light most favorable to the State and asking whether it is prima facie inconsistent with the defense theory. Evidentiary relevance and admissibility rulings are reviewed for abuse of discretion. A ruling on a capital sentencing aggravator is sustained when the trial court applied the correct legal rule and its finding is supported by competent substantial evidence. Ineffective-assistance claims generally are not cognizable on direct appeal unless ineffectiveness is apparent on the face of the record.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Florida
PARTIES	Marshall Lee Gore v. State of Florida

TOPICS

double jeopardy criminal procedure evidence sentencing right to counsel

PRACTICE AREAS

Criminal law Capital punishment Criminal procedure Evidence Appellate procedure

QUESTIONS PRESENTED

1. Whether the Double Jeopardy Clauses barred the State from retrying Gore after his first convictions were reversed on appeal for trial error.
2. Whether the trial court erred in denying a mistrial after the State asked a thirteen-year-old witness whether she had an intimate relationship with Gore.
3. Whether the evidence was sufficient to support the first-degree murder and armed-robbery convictions.
4. Whether the trial court improperly excluded reverse Williams rule evidence concerning the murder of Pauline or Paulette Johnson.
5. Whether the State improperly impeached Gore during the penalty phase with evidence of collateral acts of violence.
6. Whether the trial court properly found the cold, calculated, and premeditated aggravating circumstance.
7. Whether Gore knowingly and voluntarily waived counsel and validly represented himself during the guilt-phase closing argument and penalty phase.
8. Whether penalty-phase counsel rendered ineffective assistance by failing to present mental-health or fact witnesses.
9. Whether Gore's death sentence was proportionate.

HOLDINGS

1. The Double Jeopardy Clause does not bar a retrial when the defendant's prior conviction was set aside on appeal because of trial error, absent the narrow exception in which judicial or prosecutorial misconduct was intended to provoke the defendant into requesting a mistrial. Because Gore's first conviction was reversed on appeal rather than terminated by a defendant-requested mistrial, retrial was permissible.
2. The trial court did not abuse its discretion in denying a mistrial after one improper question concerning Gore's relationship with a thirteen-year-old witness, because the objection was sustained, the response was stricken, the jury received an immediate curative instruction, and the State did not repeat the matter or mention it in closing argument.
3. The evidence was sufficient to support Gore's first-degree murder conviction under both premeditated-murder and felony-murder theories.
4. The trial court did not abuse its discretion by excluding evidence concerning the murder of Pauline or Paulette Johnson because Gore failed to proffer sufficient underlying facts establishing the evidence's relevance and the requisite close similarity to Novick's murder.

5. The State properly questioned Gore during the penalty phase about collateral acts of violence because Gore placed his nonviolent character in issue by testifying that he was not a violent person.
6. The trial court properly found the cold, calculated, and premeditated aggravating circumstance.
7. Gore knowingly and intelligently waived counsel and validly represented himself during the guilt-phase closing argument and penalty phase; the record did not show that he was forced to choose between incompetent counsel and self-representation.
8. Gore was not entitled to relief on his ineffective-assistance claim because counsel's ineffectiveness was not apparent on the face of the record, and the record showed reasonable efforts and strategic decisions concerning mitigation evidence.
9. Gore's death sentence was proportionate and appropriate when compared with other cases in which Florida courts had affirmed death sentences.

KEY QUOTATIONS

"Only where the governmental conduct in question is intended to "goad" the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." (427)

"In sum, the sole function of the trial court on motion for directed verdict in a circumstantial-evidence case is to determine whether there is prima facie inconsistency between (a) the evidence, viewed in the light most favorable to the State and (b) the defense theory or theories." (429)

"Competent substantial evidence supports the conclusion that Gore's decision to proceed pro se was made with "eyes open."" (437)

FACTUAL BACKGROUND

Robyn Novick was last seen leaving a tavern in her yellow Corvette with Gore on March 11, 1988. Gore was later seen driving the Corvette, possessed Novick's property, abandoned the vehicle after an accident, and made statements suggesting knowledge of the crime before police told him Novick was dead. Novick's body was found nude in a remote area with fatal stab wounds and evidence of strangulation. The State also introduced similar-crime evidence involving Gore's attacks on Susan Roark and Tina Coralis, and Gore testified that he was not responsible for Novick's death.

PROCEDURAL HISTORY

Gore was initially convicted and sentenced to death in 1995. The Supreme Court of Florida reversed and ordered a new trial because of the cumulative effect of improper prosecutorial cross-examination and closing argument. On retrial, Gore was again convicted and sentenced to death; the jury recommended death unanimously. The Supreme Court of Florida affirmed the convictions and sentences.

DISPOSITION

affirmed

CASES CITED

- Gore v. State, 719 So. 2d 1197, 1200-03 (Fla. 1998)
- Oregon v. Kennedy, 456 U.S. 667 (1982)
- Lockhart v. Nelson, 488 U.S. 33, 38 (1988)
- Ruiz v. State, 743 So. 2d 1, 9-10 & n. 11 (Fla. 1999)
- Keen v. State, 504 So. 2d 396, 402 n. 5 (Fla. 1987)
- Goodwin v. State, 751 So. 2d 537, 547 (Fla. 1999)
- Cole v. State, 701 So. 2d 845, 853 (Fla. 1997)
- State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986)
- Walker v. State, 707 So. 2d 300, 313 (Fla. 1997)
- Orme v. State, 677 So. 2d 258, 262 (Fla. 1996)
- State v. Law, 559 So. 2d 187, 188-89 (Fla. 1989)
- State v. Allen, 335 So. 2d 823, 826 (Fla. 1976)
- Woods v. State, 733 So. 2d 980, 985 (Fla. 1999)
- Green v. State, 715 So. 2d 940, 943-44 (Fla. 1998)
- Holton v. State, 573 So. 2d 284, 289 (Fla. 1990)
- Crump v. State, 622 So. 2d 963, 971 (Fla. 1993)
- Jones v. State, 652 So. 2d 346, 349-50 (Fla. 1995)
- Mahn v. State, 714 So. 2d 391, 397 (Fla. 1998)
- Knowles v. State, 632 So. 2d 62, 66 (Fla. 1993)
- Clark v. State, 609 So. 2d 513, 515 (Fla. 1992)
- Parker v. State, 458 So. 2d 750, 754 (Fla. 1984)
- Griffin v. United States, 502 U.S. 46, 47 (1991)
- Jones v. State, 748 So. 2d 1012, 1024 (Fla. 1999)
- Mungin v. State, 689 So. 2d 1026, 1029-30 (Fla. 1995)
- Rivera v. State, 561 So. 2d 536, 539-40 (Fla. 1990)
- State v. Savino, 567 So. 2d 892, 894 (Fla. 1990)
- Bell v. State, 699 So. 2d 674, 677 (Fla. 1997)
- Almeida v. State, 748 So. 2d 922, 932 (Fla. 1999)
- Willacy v. State, 696 So. 2d 693, 695 (Fla. 1997)
- Wuornos v. State, 644 So. 2d 1000, 1008-09 (Fla. 1994)
- Hildwin v. State, 531 So. 2d 124, 127-28 (Fla. 1988)
- Smith v. State, 515 So. 2d 182, 185 (Fla. 1987)
- Faretta v. California, 422 U.S. 806, 820, 835 (1975)
- Waterhouse v. State, 596 So. 2d 1008, 1014 (Fla. 1992)
- Sanchez v. Mondragon, 858 F.2d 1462, 1465-66 (10th Cir. 1988)
- United States v. Allen, 895 F.2d 1577 (10th Cir. 1990)

- United States v. Padilla, 819 F.2d 952, 956 (10th Cir. 1987)
- Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973)
- Martinez v. State, 761 So. 2d 1074, 1078 n. 2 (Fla. 2000)
- Lawrence v. State, 691 So. 2d 1068, 1074 (Fla. 1997)
- Consalvo v. State, 697 So. 2d 805, 811 n. 4 (Fla. 1996)
- Jennings v. State, 718 So. 2d 144, 154 (Fla. 1998)
- Franqui v. State, 699 So. 2d 1312, 1327 (Fla. 1997)
- Gore v. State, 599 So. 2d 978 (Fla. 1992)
- Jones v. State, 690 So. 2d 568 (Fla. 1996)
- Ferrell v. State, 680 So. 2d 390 (Fla. 1996)
- Hunter v. State, 660 So. 2d 244 (Fla. 1995)
- Heiney v. State, 447 So. 2d 210 (Fla. 1984)
- Gore v. State, 573 So. 2d 87 (Fla. 3d DCA 1991)

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