

SUPREME COURT OF GEORGIA

Hicks v. State, 287 Ga. 260

695 S.E.2d 195 (2010) · No. S10A0177 · Decided April 19, 2010

SUMMARY

The Supreme Court of Georgia affirmed Deanthony Rashawn Hicks's convictions for malice murder and possession of a firearm during the commission of a felony. The court held that the evidence was sufficient despite conflicting and recanted witness testimony, and that the trial court properly refused instructions on defense of others and voluntary manslaughter. The court also held that Hicks waived his challenge to the jury instruction concerning witness identification certainty and that plain error was not shown.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	April 19, 2010
DOCKET	S10A0177
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hicks appealed the denial of his motion for new trial following convictions for malice murder and possession of a firearm during the commission of a felony.
STANDARD OF REVIEW	The sufficiency of the evidence is reviewed under whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. Whether evidence is sufficient to authorize a requested jury charge is a question of law; refusal to give an unsupported charge is reviewed for error. Unpreserved jury-charge claims are reviewed only for plain error affecting substantial rights under OCGA § 17-8-58(b).
PRECEDENTIAL VALUE	published Georgia Supreme Court opinion
PARTIES	Deanthony Rashawn Hicks v. The State

TOPICS

jury instructions

lesser included offense instructions

instructions objections

criminal procedure

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain Hicks's convictions for malice murder and possession of a firearm during the commission of a felony.
2. Whether the trial court erred by refusing to instruct the jury on justification based on the use of force in defense of others.
3. Whether the trial court erred by refusing to instruct the jury on voluntary manslaughter as a lesser included offense of malice murder.
4. Whether the trial court's instruction that a witness's level of certainty may be considered in assessing identification reliability constituted reversible error despite Hicks's failure to make a specific objection.

HOLDINGS

1. The evidence was sufficient for a rational trier of fact to find Hicks guilty beyond a reasonable doubt of the offenses for which he was convicted.
2. The trial court properly refused to give a justification instruction because no evidence supported the theory that Hicks acted in defense of Vinson or reasonably feared imminent serious harm.
3. The trial court properly refused to instruct the jury on voluntary manslaughter because the evidence did not show an intentional killing caused by sudden, violent, and irresistible passion resulting from serious provocation.
4. Hicks waived appellate review of his challenge to the instruction concerning a witness's level of certainty because he failed to make a specific objection before the jury retired, and the plain-error exception did not apply.

KEY QUOTATIONS

“"[Appellant's] contention that the evidence was conflicting and that the witnesses who testified for the state were not credible does not change this result, as `resolving evidence conflicts and inconsistencies, and assessing witness credibility, are the province of the factfinder, not this Court.'” (197)

“"Fighting prior to a homicide `does not constitute the type of provocation that would warrant a charge of voluntary manslaughter.'” (198)

FACTUAL BACKGROUND

Following an argument between the victim, Michael Howard, and Tierra Vinson, Hicks approached Howard while wielding a pistol. When Howard swatted at the firearm and attempted to flee, Hicks shot him three times

in the back, killing him. Witnesses identified Hicks as the shooter or implicated him in statements to police, and bullets of the same caliber as those used in the shooting were found in a codefendant's vehicle. At trial, some witnesses recanted or contradicted their earlier statements, but the jury was presented with both the trial testimony and the prior statements.

PROCEDURAL HISTORY

A Fulton County grand jury indicted Hicks for malice murder, felony murder, aggravated assault, and possession of a firearm during the commission of a felony. Following trial, the jury convicted him of malice murder, possession of a firearm during the commission of a felony, and other offenses; the remaining counts were merged or vacated by operation of law. The trial court denied his amended motion for new trial, and Hicks appealed to the Supreme Court of Georgia, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)
- Major v. State, 280 Ga. 746, 747, 632 S.E.2d 661 (2006)
- Brower v. State, 298 Ga. App. 699, 702(1), 680 S.E.2d 859 (2009)
- Broussard v. State, 276 Ga. 216(2), 576 S.E.2d 883 (2003)
- Brown v. State, 267 Ga. 350(2), 478 S.E.2d 129 (1996)
- Lightning v. State, 297 Ga. App. 54(5), 676 S.E.2d 780 (2009)
- Davis v. State, 269 Ga. 276(3), 496 S.E.2d 699 (1998)
- Alexis v. State, 273 Ga. 423(4), 541 S.E.2d 636 (2001)
- Williams v. State, 209 Ga. App. 355(1), 433 S.E.2d 361 (1993)
- Sparks v. State, 277 Ga. 72, 73(2), 586 S.E.2d 645 (2003)
- Brennon v. State, 253 Ga. 240, 241, 319 S.E.2d 841 (1984)
- Nichols v. State, 275 Ga. 246(2), 563 S.E.2d 121 (2002)
- Worthem v. State, 270 Ga. 469(2), 509 S.E.2d 922 (1999)
- Sampson v. State, 282 Ga. 82, 85(5), 646 S.E.2d 60 (2007)
- Malcolm v. State, 263 Ga. 369(5), 434 S.E.2d 479 (1993)
- Ratana v. State, 297 Ga. App. 747, 678 S.E.2d 193 (2009)