

SUPREME COURT OF GEORGIA

Culmer v. State, 282 Ga. 330

647 S.E.2d 30 (2007) · No. S07A0242 · Decided June 25, 2007

SUMMARY

The Supreme Court of Georgia affirmed Gervaise Culmer’s convictions for malice murder and theft by taking arising from the death of Patrice Peart. The court held that hearsay testimony concerning prior difficulties between Culmer and Peart was admissible under the necessity exception, or was harmless and nonprejudicial, and rejected Culmer’s ineffective-assistance claims. The court also upheld the refusal to give a voluntary-manslaughter instruction because the evidence did not establish sudden, violent, and irresistible passion resulting from sufficient provocation.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; All Justices
JURISDICTION	Georgia
DECIDED	June 25, 2007
DOCKET	S07A0242
DISPOSITION	affirmed
PROCEDURAL POSTURE	Culmer appealed his convictions for malice murder and theft by taking, asserting insufficient evidence, erroneous admission of hearsay, ineffective assistance of counsel, and refusal to instruct the jury on voluntary manslaughter.
STANDARD OF REVIEW	The sufficiency of the evidence was reviewed under whether a rational trier of fact could find guilt beyond a reasonable doubt. Admission of hearsay under the necessity exception was reviewed for abuse of discretion. Ineffective-assistance claims required proof of deficient performance and resulting prejudice under Strickland. The refusal to give a requested jury instruction was reviewed for legal error, with the instruction required only if supported by the evidence.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; binding precedent in Georgia.
PARTIES	Gervaise Culmer v. The State

TOPICS

criminal procedure hearsay ineffective assistance evidence appellate procedure

PRACTICE AREAS

Georgia criminal law criminal procedure evidence ineffective assistance of counsel appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Culmer's convictions for malice murder and theft by taking.
2. Whether the trial court properly admitted testimony concerning prior difficulties between Culmer and Peart under the necessity exception to the hearsay rule.
3. Whether Culmer was denied effective assistance of counsel based on counsel's handling of telephone records, failure to object to hearsay, and failure to request contemporaneous limiting instructions concerning prior-difficulty testimony.
4. Whether the trial court erred by refusing to instruct the jury on voluntary manslaughter.

HOLDINGS

1. The evidence was sufficient to authorize a rational trier of fact to find Culmer guilty beyond a reasonable doubt of malice murder and theft by taking.
2. The trial court did not abuse its discretion by admitting the testimony of a witness concerning Peart's statements about prior difficulties with Culmer under the necessity exception to the hearsay rule.
3. Culmer failed to establish prejudice from counsel's failure to place greater emphasis on a telephone call allegedly showing that Peart was alive after Culmer had allegedly left the apartment.
4. Culmer failed to establish ineffective assistance based on counsel's failure to object to the challenged hearsay or to request a contemporaneous limiting instruction before each prior-difficulty witness.
5. The trial court properly refused to give a jury instruction on voluntary manslaughter because the evidence did not show that Culmer killed Peart in response to a sudden, violent, and irresistible passion arising from serious provocation.

KEY QUOTATIONS

"Necessity" is demonstrated when the declarant is deceased, when the statement is shown to be relevant to a material fact, and when the statement is more probative of the material fact than other evidence that may be produced and offered." (647 S.E.2d 33)

"To prevail on a claim of ineffective assistance of trial counsel, appellant must show counsel's performance was deficient and that the deficient performance prejudiced him to the point that a reasonable probability exists that, but for counsel's errors, the outcome of the trial would have been different." (647 S.E.2d 34)

"A person commits the offense of voluntary manslaughter when he causes the death of another human being under circumstances which would otherwise be murder and if he acts solely as the result of a sudden, violent,

and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person.” (647 S.E.2d 36)

FACTUAL BACKGROUND

Culmer and Patrice Peart had a turbulent romantic relationship, and witnesses testified that Culmer threatened Peart and that Peart reported difficulties and physical abuse in the relationship. Peart disappeared on June 7, 2001, and her body was found several days later; she died from blunt-force trauma to the neck, probably strangulation. Evidence connected Culmer to Peart's apartment, including telephone records, DNA found in a semen sample, property belonging to Peart found in Culmer's home, and a partially burned check found at another residence. Culmer denied being present when Peart was killed and suggested that James Johnson, another man involved with Peart, was responsible.

PROCEDURAL HISTORY

A Fulton County jury convicted Culmer of malice murder, felony murder, aggravated assault, and theft by taking after a trial conducted from March 11 through March 22, 2002. The trial court sentenced him to life imprisonment for murder and a concurrent twelve-month sentence for theft by taking; the felony-murder conviction was vacated by operation of law and the aggravated-assault conviction merged into the malice-murder conviction. The trial court denied Culmer's motion for new trial, as amended, 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)
- Watson v. State, 278 Ga. 763(2a), 604 S.E.2d 804 (2004)
- Chapel v. State, 270 Ga. 151(4), 510 S.E.2d 802 (1998)
- Turner v. State, 281 Ga. 647(3a), 641 S.E.2d 527 (2007)
- McPherson v. State, 274 Ga. 444(10), 553 S.E.2d 569 (2001)
- Myers v. State, 275 Ga. 709(4), 572 S.E.2d 606 (2002)
- Walker v. Houston, 277 Ga. 470(1), 588 S.E.2d 715 (2003)
- Sims v. State, 281 Ga. 541(2), 640 S.E.2d 260 (2007)
- Lynch v. State, 280 Ga. 887(2), 635 S.E.2d 140 (2006)
- Hunter v. State, 281 Ga. 693(7), 642 S.E.2d 668 (2007)
- Webb v. State, 154 Ga. App. 395(2), 268 S.E.2d 438 (1980)
- Smith v. State, 270 Ga. 68(3), 508 S.E.2d 145 (1998)
- Strickland v. State, 257 Ga. 230(2), 357 S.E.2d 85 (1987)
- Goforth v. State, 271 Ga. 700(1), 523 S.E.2d 868 (1999)

- Hatchett v. State, 259 Ga. 857, Hatchett v. State, 259 Ga. 857(1), 388 S.E.2d 694 (1990)

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