

SUPREME COURT OF GEORGIA

White v. State

297 Ga. 218 (2015) · No. S15A0319 · Decided June 1, 2015

SUMMARY

The Supreme Court of Georgia affirmed Adrian White’s convictions and sentences for malice murder, aggravated assault, and firearm possession. The court held that the mutual-combat jury instruction was properly given, trial counsel was not ineffective for declining to reopen closing argument, and the aggravated-assault conviction did not merge with the murder conviction because a deliberate interval separated the shooting and beating.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Melton, Justice                                                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | Georgia                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | June 1, 2015                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | S15A0319                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Adrian White appealed his convictions and sentences following a jury trial, asserting errors in the jury instructions and sentencing and ineffective assistance of trial counsel.                                                                                                                                                                                |
| STANDARD OF REVIEW    | The court reviewed the sufficiency of the evidence under Jackson v. Virginia; reviewed the ineffective-assistance claim by accepting factual findings and credibility determinations unless clearly erroneous while independently applying legal principles; and reviewed the merger issue under the governing analysis of the order and timing of the assaults. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Georgia                                                                                                                                                                                                                                                                                                   |
| PARTIES               | Adrian White v. The State                                                                                                                                                                                                                                                                                                                                        |

TOPICS

- jury instructions
- ineffective assistance
- sentencing
- criminal procedure
- appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

appellate practice

## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support White's convictions.
2. Whether the trial court erred by giving the jury a mutual-combat instruction after White requested and agreed to the instruction.
3. Whether trial counsel was ineffective for declining the opportunity to reopen closing argument to address mutual combat.
4. Whether the aggravated-assault conviction was required to merge with the malice-murder conviction for sentencing because the shooting and subsequent beating were not separated by a deliberate interval.

## HOLDINGS

1. The evidence was sufficient to enable the jury to find White guilty of the offenses for which he was convicted beyond a reasonable doubt.
2. White waived even plain-error review of his challenge to the mutual-combat instruction because he requested the instruction and agreed when the trial court ultimately gave it; in any event, the instruction was not erroneous because it benefited the defendant by allowing a voluntary-manslaughter verdict in lieu of murder.
3. White failed to establish ineffective assistance based on counsel's decision not to reopen closing argument to address mutual combat.
4. The aggravated-assault conviction did not merge with the malice-murder conviction because the evidence supported a finding of a deliberate interval between the fatal shooting and the subsequent nonfatal beating.

## KEY QUOTATIONS

*"Because the mutual combat charge authorizes a jury to find the defendant guilty of voluntary manslaughter in lieu of murder, it is a charge that benefits a defendant and, as such, a convicted defendant's complaint that it was improper to give the charge is without merit."* (at 221)

*"Inasmuch as th[is] decision . . . was not patently unreasonable, and because [White] provides no basis for concluding that the result of his trial would have been different if [his counsel] had [presented additional] closing argument, he has not shown that his trial counsel was ineffective in this regard."* (at 222)

## FACTUAL BACKGROUND

White, Marquez Webb, and Demario Thornton were outside an apartment when Anthony Jones stopped his truck and argued with Thornton. According to eyewitnesses, White took a firearm from Thornton's waistband and shot Jones in the back after Jones began walking away. Jones took a long time to fall, and White then beat him while he was still alive and conscious. The evidence supported the jury's findings of malice murder, aggravated assault, and firearm possession.

## PROCEDURAL HISTORY

White was indicted in Fulton County for malice murder, felony murder, two counts of aggravated assault, and possession of a firearm during the commission of a felony. After a jury convicted him, the trial court imposed a life sentence for malice murder, a consecutive twenty-year sentence for aggravated assault, and a consecutive five-year sentence for firearm possession; the felony-murder conviction was vacated by operation of law and another aggravated-assault count merged for sentencing. The trial court denied White's amended motion for new trial, this Court vacated that order and remanded for application of the correct standard of review, and the trial court again denied the motion after remand. The Supreme Court of Georgia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- *Malcolm v. State*, 263 Ga. 369 (4) (434 SE2d 479) (1993)
- *White v. State*, 293 Ga. 523 (753 SE2d 115) (2013)
- *Jackson v. Virginia*, 443 U.S. 307 (1979)
- *Woodard v. State*, Case No. S14A1532, decided March 27, 2015
- *Sanders v. State*, 283 Ga. 372, 375 (2) (c) (659 SE2d 376) (2008)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *Fuller v. State*, 277 Ga. 505 (3) (591 SE2d 782) (2004)
- *Robinson v. State*, 277 Ga. 75, 76 (586 SE2d 313) (2003)
- *Wright v. State*, 291 Ga. 869, 870 (2) (734 SE2d 876) (2012)
- *McKenzie v. State*, 284 Ga. 342, 347 (4) (b) (667 SE2d 43) (2008)
- *Sears v. State*, 292 Ga. 64, 73 n. 7 (734 SE2d 345) (2012)
- *Reddings v. State*, 292 Ga. 364, 367 (738 SE2d 49) (2013)
- *Coleman v. State*, 286 Ga. 291, 295 (687 SE2d 427) (2009)
- *Alvelo v. State*, 290 Ga. 609, 611-612 (724 SE2d 377) (2012)
- *Slaughter v. State*, 292 Ga. 573, 575 (1) n. 2 (740 SE2d 119) (2013)
- *Drane v. State*, 265 Ga. 255, 260 (455 SE2d 27) (1995)

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