

SUPREME COURT OF OHIO

State v. Kole

92 Ohio St. 3d 303 (Ohio 2001) · Decided July 18, 2001

SUMMARY

The Ohio Supreme Court held that defense counsel provided ineffective assistance by failing to raise R.C. 2713.22 as a potential statutory defense to abduction and burglary charges arising from a bounty hunter’s attempt to apprehend a fugitive. The court also found that related unraised issues concerning firearm operability and firearm specifications contributed to prejudice. The court reversed the appellate judgment and remanded the case for a new trial, declining to resolve the broader fugitive-recovery privilege questions.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Stratton, J.; Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.
JURISDICTION	Ohio
DECIDED	July 18, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Discretionary appeal from the affirmance of criminal convictions and sentence by the Court of Appeals for Lorain County.
STANDARD OF REVIEW	Ineffective-assistance claims were analyzed under Strickland's deficient-performance and prejudice requirements, with highly deferential scrutiny of counsel's performance. The court reviewed the legal adequacy of the jury instructions and whether counsel's omissions created a reasonable probability of a different result.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	Kole v. State of Ohio

TOPICS

- ineffective assistance
- right to counsel
- criminal procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial and appellate counsel provided ineffective assistance by failing to raise R.C. 2713.22 as a statutory defense to the abduction and burglary charges.
2. Whether the failure to raise firearm operability and the applicability of firearm specifications to the weapons-under-disability conviction contributed to prejudice requiring reversal of all convictions and specifications.
3. Whether the Supreme Court of Ohio should decide the underlying fugitive-recovery issues concerning a bounty hunter's authority to enter a third party's home.

HOLDINGS

1. Counsel's failure to present R.C. 2713.22 as a statutory defense to the abduction and burglary charges constituted deficient performance and prejudiced Kole because the statute could have provided a defense and the jury instructions did not properly state the applicable law.
2. The ineffective assistance relating to the abduction and burglary charges, combined with counsel's failure to raise firearm operability and the applicability of firearm specifications to the weapons-under-disability offense, required reversal and remand of all convictions and specifications.
3. The court did not decide whether Ohio law permits a bounty hunter to enter a third party's home to apprehend a fugitive because the issue was not ripe for review after the court ordered a new trial.

KEY QUOTATIONS

“R.C. 2713.22 provides: “For the purpose of surrendering the defendant, the bail may arrest him at any time or place before he is finally charged, or, by a written authority indorsed on a certified copy of the bond, may empower any person of suitable age and discretion to do so.”” (306)

“We hold that counsel’s failure to present the jury with an R.C. 2713.22 statutory defense to the charges of abduction and burglary established a reasonable probability that but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (308)

“Because we conclude that defendant did not receive the counsel guaranteed him by the Sixth Amendment and that this case must be remanded for a new trial, the fugitive recovery issues presented in this appeal are not yet ripe for review.” (308-309)

FACTUAL BACKGROUND

A-B-C Bail Bonds contracted with Kole, a fugitive recovery agent, to apprehend Cecil Cobb, who had absconded after being released on bail. Acting on an anonymous tip, Kole and his partner entered Cobb's stepbrother William McAuliffe's apartment without permission and with guns drawn, searched for Cobb, and later apprehended him outside the apartment. Kole was convicted of abduction, burglary, and having a weapon while under a disability, with firearm and prior-offense-of-violence specifications.

PROCEDURAL HISTORY

Kole was indicted and convicted by a jury of abduction, burglary, and having a weapon while under a disability, along with firearm specifications; the trial court also found the prior-offense-of-violence specifications true. The Court of Appeals for Lorain County affirmed. The Supreme Court of Ohio allowed a discretionary appeal, reversed the appellate judgment, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Court of Appeals for Lorain County and remand the cause to the trial court for a new trial on all convictions and specifications.

CASES CITED

- Taylor v. Taintor, 83 U.S. (16 Wall.) 366, 371-372, 21 L.Ed. 287, 290 (1872)
- Herd v. Maryland, 125 Md. App. 77, 115, 724 A.2d 693, 712 (1999)
- Strickland v. Washington, 466 U.S. 668, 686-691, 694 (1984)
- State v. Bradley, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus
- State v. Rice, 69 Ohio St. 2d 422, 23 O.O.3d 374, 433 N.E.2d 175 (1982)