

SUPREME COURT OF GEORGIA

Hites v. State

296 Ga. 528 (2015) · No. S14A1419 · Decided February 16, 2015

SUMMARY

The Supreme Court of Georgia affirmed John Thurston Hites's convictions for felony murder and aggravated assault arising from the fatal stabbing of Che Mitchem. The court held that challenges concerning notice and the admission of Hites's prior federal mail-fraud conviction were waived, and that excluding the victim's alleged statements was harmless error. The court also rejected Hites's ineffective-assistance claims concerning self-defense evidence, phone records, witness testimony, and cross-examination.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Presiding Justice; All other Justices
JURISDICTION	Georgia
DECIDED	February 16, 2015
DOCKET	S14A1419
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the denial of his amended motion for new trial and his convictions for felony murder and aggravated assault.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed under whether a rational trier of fact could find guilt beyond a reasonable doubt. Evidentiary rulings concerning res gestae are reviewed for harmless error. Ineffective-assistance claims are evaluated under Strickland v. Washington, requiring deficient performance and resulting prejudice. Decisions concerning witness selection and the scope of cross-examination are reviewed deferentially as matters of trial strategy and tactics.
PRECEDENTIAL VALUE	Published and precedential decision of the Supreme Court of Georgia
PARTIES	John Thurston Hites v. The State

TOPICS

- criminal procedure
- evidence
- ineffective assistance
- harmless error
- appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Appellate litigation

Ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Hites's felony-murder conviction.
2. Whether the State's introduction of Hites's prior federal mail-fraud conviction was improper because of inadequate notice or failure to make and articulate the required balancing determination.
3. Whether the trial court improperly excluded Hites's testimony about statements Mitchem allegedly made immediately before the stabbing under the former res gestae exception to hearsay.
4. Whether Hites's trial counsel rendered ineffective assistance by inadequately presenting self-defense, failing to subpoena phone records, failing to call a witness, or inadequately cross-examining witnesses.

HOLDINGS

1. The evidence was sufficient for a rational trier of fact to find Hites guilty beyond a reasonable doubt of felony murder while in the commission of aggravated assault.
2. Hites waived his challenges to the State's notice and to the trial court's failure to articulate the balancing analysis governing admission of his prior federal conviction because he did not make the specific objections at trial.
3. The trial court erred by refusing to allow Hites to testify about statements Mitchem allegedly made immediately before the fatal encounter, because statements so directly connected to the killing may be admissible as res gestae to explain the deceased victim's conduct.
4. Hites failed to establish ineffective assistance because he did not show deficient performance or a reasonable probability that the alleged errors affected the outcome of trial.

KEY QUOTATIONS

“In order for Hites to prevail on his claim that his trial counsel was ineffective, he has to show, under Strickland v. Washington, 466 U.S. 668 (104 SCt 2052, 80 LE2d 674) (1984), that counsel's performance was deficient and that, but for the deficiency, there was a reasonable probability of an outcome at trial that was more favorable to him.”

“The decision of whether to call a witness to testify at trial is a matter of trial strategy and tactics, and such a strategic and tactical decision cannot be deemed deficient performance unless the decision is so unreasonable that no competent attorney would have made it under similar circumstances.”

FACTUAL BACKGROUND

Hites accompanied Lisa Hamlin to the home of Hamlin's sister, Linda Mitchem Schultz, after Hamlin became upset with Schultz. When Schultz and Hamlin began fighting, Schultz's husband, Che Mitchem, intervened, and Hites fought with Mitchem and repeatedly stabbed him with a knife. Mitchem died from multiple sharp-force injuries, and Hites later texted former in-laws that he had stabbed Mitchem because Mitchem had grabbed

Hamlin. The defense sought to introduce Hites's account of statements Mitchem allegedly made before the stabbing and challenged counsel's handling of self-defense evidence.

PROCEDURAL HISTORY

An Atkinson County grand jury indicted Hites for malice murder, felony murder while in the commission of aggravated assault, and aggravated assault. Following a jury trial, he was acquitted of malice murder and convicted of felony murder and aggravated assault; he received a life sentence for felony murder, and the aggravated-assault conviction merged for sentencing. The trial court denied his motion for new trial, as amended, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307 (1979)
- Young v. State, 290 Ga. 392, 400 (9) (2012)
- Hall v. State, 292 Ga. 701, 702 (2) (2013)
- Abercrombie v. State, 297 Ga. App. 522 (2009)
- Clay v. State, 290 Ga. 822, 836-838 (3) (B) (2012)
- Rector v. State, 285 Ga. 714, 715 (3) (2009)
- Johnson v. State, 292 Ga. 785, 789 (4) (2013)
- Wilson v. State, 295 Ga. 84, 87 (n. 5) (2014)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Allen v. State, 293 Ga. 626, 627 (2) (2013)
- Miller v. State, 296 Ga. 9, 12 (4) (a) (2014)
- Walker v. State, 294 Ga. 752, 756 (2) (c) (2014)
- Hoffler v. State, 292 Ga. 537, 543 (5) (2013)