

SUPREME COURT OF GEORGIA

Albury v. State

S22A0616 · No. S22A0616 · Decided August 23, 2022

SUMMARY

The Supreme Court of Georgia affirmed Riki Ray Albury’s convictions for malice murder and related crimes arising from the stabbing death of Ronald Roach. The court held that Albury waived ordinary appellate review of his juror and jury-polling claims, that the trial court properly admitted a post-incision autopsy photograph under the Georgia Evidence Code, and that counsel was not ineffective for pursuing an all-or-nothing defense without requesting a voluntary-manslaughter instruction.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Warren, Justice
JURISDICTION	Georgia
DECIDED	August 23, 2022
DOCKET	S22A0616
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the denial of an amended motion for new trial following convictions for malice murder and other crimes.
STANDARD OF REVIEW	Juror-excusal claim reviewed for ordinary appellate preservation; plain-error review was unavailable. Evidentiary rulings concerning relevance and exclusion under Rule 403 are reviewed for abuse of discretion. Ineffective-assistance claims are reviewed under Strickland's deficient-performance and prejudice framework.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Riki Ray Albury v. The State

TOPICS

- jury selection
- evidence
- jury instructions
- ineffective assistance
- preservation of error

PRACTICE AREAS

- criminal procedure
- evidence
- jury instructions
- ineffective assistance of counsel
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by failing to excuse two jurors for cause based on scheduling conflicts when Albury did not object or move to strike them.
2. Whether the trial court erred by admitting a post-incision autopsy photograph without expressly referencing the Rule 403 balancing test.
3. Whether trial counsel was ineffective for failing to request that the other jurors be questioned after Juror 28 became ill while the autopsy photograph was displayed.
4. Whether trial counsel was ineffective for failing to request or object to the omission of a voluntary-manslaughter jury instruction as part of an agreed all-or-nothing defense strategy.

HOLDINGS

1. A defendant who does not object or move to strike jurors for cause does not preserve the issue for ordinary appellate review, and plain-error review is unavailable for this type of claim absent a specific statutory provision.
2. The trial court implicitly conducted the required Rule 403 balancing analysis, and it did not abuse its discretion in admitting the post-incision autopsy photograph because the photograph was relevant and its probative value was not substantially outweighed by unfair prejudice.
3. Albury failed to establish ineffective assistance because, even assuming counsel performed deficiently by not requesting further inquiry of the other jurors, he presented no evidence showing a reasonable probability that the outcome would have been different.
4. Counsel was not constitutionally ineffective for pursuing an all-or-nothing defense and, after consulting with Albury, not requesting a voluntary-manslaughter instruction.

KEY QUOTATIONS

“Decisions regarding relevance are committed to the sound discretion of the trial court, and the exclusion of relevant evidence under Rule 403 is an extraordinary remedy that should be used only sparingly.” (at 6)

“Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” (at 6)

“Decisions about which defenses to present and which jury charges to request are classic matters of trial strategy, and pursuit of an all-or-nothing defense is generally a permissible strategy.” (at 17)

FACTUAL BACKGROUND

Ronald Roach was found dead in his apartment after neighbors heard an argument, noises, and people leaving in Roach's vehicle. Evidence placed Albury in the apartment with codefendant Jared Kelvin Smith and Kessiah Rowe, and Rowe testified that Smith attacked Roach while Albury remained nearby and later acknowledged that they had left Roach badly injured and could have stopped the attack. The medical examiner identified 38 stab wounds and blunt-force injuries, including a head injury depicted in the challenged post-incision autopsy photograph.

PROCEDURAL HISTORY

A DeKalb County grand jury indicted Albury and two codefendants for malice murder, felony murder, aggravated assault, possession of a knife during the commission of a felony, and theft by taking. After severance, Albury was tried from September 20 through September 26, 2019, convicted on all counts, and sentenced to life imprisonment for malice murder plus consecutive probated terms for the knife and theft convictions; the felony-murder count was vacated by operation of law and aggravated assault merged for sentencing. The trial court denied Albury's amended motion for new trial, and he timely appealed. The Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Smith v. State, 313 Ga. 584 (872 SE2d 262) (2022)
- Hill v. State, 310 Ga. 180, 186 (850 SE2d 110) (2020)
- Veal v. State, 301 Ga. 161, 163 (800 SE2d 325) (2017)
- Thompson v. State, 294 Ga. 693, 700-701 (755 SE2d 713) (2014)
- Mitchell v. State, 307 Ga. 855, 863 (838 SE2d 847) (2020)
- Venturino v. State, 306 Ga. 391, 395-396 (830 SE2d 110) (2019)
- State v. Orr, 305 Ga. 729, 736 (827 SE2d 892) (2019)
- Allen v. State, 307 Ga. 707, 710 (838 SE2d 301) (2020)
- Johnson v. State, 312 Ga. 481, 494 (863 SE2d 137) (2021)
- Moore v. State, 307 Ga. 290, 295 (835 SE2d 610) (2019)
- Strickland v. Washington, 466 U.S. 668, 687-695, 694 (104 SCt 2052, 80 LE2d 674) (1984)
- Wesley v. State, 286 Ga. 355, 356 (689 SE2d 280) (2010)
- Romer v. State, 293 Ga. 339, 344 (745 SE2d 637) (2013)
- Marshall v. State, 297 Ga. 445, 448 (774 SE2d 675) (2015)
- Davis v. State, 299 Ga. 180, 183 (787 SE2d 221) (2016)
- Lawrence v. State, 286 Ga. 533, 533-534 (690 SE2d 801) (2010)
- Davis v. State, 290 Ga. 584, 587-588 (723 SE2d 431) (2012)
- Jones v. State, 282 Ga. 47, 50 (644 SE2d 853) (2007)
- Outlaw v. State, 311 Ga. 396, 406 (858 SE2d 63) (2021)
- Floyd v. State, 307 Ga. 789, 802 (837 SE2d 790) (2020)
- Szorcisk v. State, 303 Ga. 737, 742-743 (814 SE2d 708) (2018)