

SUPREME COURT OF UTAH

State v. Gallegos

Gallegos, 2020 UT 19 (Utah 2020) · No. 20180890 · Decided April 29, 2020

SUMMARY

The Utah Supreme Court reviews a criminal defendant’s claims that trial counsel provided ineffective assistance by failing to call an eyewitness-identification expert and that the Utah Court of Appeals improperly denied a Utah Rule of Appellate Procedure 23B motion to supplement the record. The court holds that the affidavits did not establish a reasonable likelihood of a different trial result and that counsel’s subjective reasons were not necessary to evaluate the objective Strickland standard. The court affirms the court of appeals.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Pearce; Chief Justice Durrant; Associate Chief Justice Lee; Justice Himonas; Justice Petersen
JURISDICTION	Utah
DECIDED	April 29, 2020
DOCKET	20180890
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gallegos sought certiorari review of the Utah Court of Appeals' decision affirming his attempted-murder conviction and denying his Utah Rule of Appellate Procedure 23B motion to supplement the record in support of an ineffective-assistance claim.
STANDARD OF REVIEW	On certiorari, the court reviews the decision of the court of appeals, not the district court, applies the same standard of review used by the court of appeals, and reviews for correctness without deference. The Rule 23B and ineffective-assistance issues were therefore reviewed for correctness.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John Edward Gallegos v. State of Utah

TOPICS

appellate procedure

ineffective assistance

right to counsel

criminal procedure

sixth amendment

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional criminal procedure

ineffective assistance of counsel

evidence

QUESTIONS PRESENTED

1. Whether the Utah Court of Appeals erred by denying Gallegos's Utah Rule of Appellate Procedure 23B motion to supplement the record with facts concerning trial counsel's alleged ineffective assistance.
2. Whether trial counsel's failure to call an eyewitness-identification expert constituted deficient performance under Strickland v. Washington.
3. Whether Gallegos established prejudice from counsel's failure to call the eyewitness-identification expert.
4. Whether trial counsel's failure to seek severance of the charges prejudiced Gallegos.

HOLDINGS

1. The court of appeals properly denied Gallegos's Rule 23B motion because the affidavits and existing record did not allege specific facts showing a reasonable likelihood that the proposed expert testimony would have changed the trial result.
2. The court of appeals did not err by considering whether there was a conceivable tactical basis for counsel's decision not to call Dr. Buck, because that inquiry was properly understood and applied as part of Strickland's objective-reasonableness standard; however, the absence of a conceivable tactical basis is not by itself the end of the Strickland inquiry.
3. Gallegos failed to establish Strickland prejudice because there was no substantial likelihood that Dr. Buck's eyewitness-identification testimony would have produced a different result in light of the physical and circumstantial evidence linking Gallegos to the attack.
4. The court concluded, for the reasons given by the court of appeals, that trial counsel's failure to seek severance did not prejudice Gallegos.

KEY QUOTATIONS

“Rule 23B is not an invitation to fish for facts.” (¶ 40)

“The Strickland inquiry is objective, not subjective.” (¶ 47)

“But we take this opportunity to disavow any notion that the “no conceivable tactical basis” language means anything other than the Strickland standard.” (¶ 58)

“The likelihood of a different result must be substantial, not just conceivable.” (¶ 64)

FACTUAL BACKGROUND

During a nighttime attack near Lester Park, the victim was beaten, stabbed, and attacked by dogs while several eyewitnesses observed the incident. Gallegos was later found near a vehicle matching a witness's description, carrying a knife that tested positive for the victim's blood; the victim's blood was also found on Gallegos's body and clothing, and Gallegos had injuries consistent with having fallen while fleeing. Two eyewitnesses identified Gallegos, and trial counsel declined to call Dr. Julie Buck, an expert whose proposed testimony concerned problems with eyewitness identifications and the procedures used in the identification lineup.

PROCEDURAL HISTORY

A jury convicted Gallegos of attempted murder and six additional offenses, and the district court sentenced him to nine years to life for attempted murder, with additional concurrent sentences. On appeal, Gallegos argued that trial counsel was ineffective for failing to call eyewitness-identification expert Dr. Julie Buck and moved under Rule 23B to supplement the record with affidavits concerning counsel's performance and prejudice. The Utah Court of Appeals denied the motion and affirmed, and the Utah Supreme Court granted certiorari. The Supreme Court of Utah affirmed the court of appeals.

DISPOSITION

affirmed

CASES CITED

- USA Power, LLC v. PacifiCorp, 2016 UT 20, ¶ 8 n.3, 372 P.3d 629
- State v. Wilder, 2018 UT 17, ¶ 15, 420 P.3d 1064
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Garcia, 2017 UT 53, ¶¶ 28, 35, 424 P.3d 171
- Menzies v. State, 2014 UT 40, ¶¶ 75-77, 91, 344 P.3d 581
- State v. Bedell, 2014 UT 1, ¶ 23, 322 P.3d 697
- State v. Nelson, 2015 UT 62, ¶¶ 14, 28, 355 P.3d 1031
- State v. Barela, 2015 UT 22, ¶ 21, 349 P.3d 676
- State v. Hutchings, 2012 UT 50, ¶ 18, 285 P.3d 1183
- State v. Griffin, 2015 UT 18, ¶¶ 17, 19, 441 P.3d 1166
- State v. Hopkins, 1999 UT 98, ¶ 13 n.1, 989 P.2d 1065
- State v. Ray, 2020 UT 12, ¶¶ 34, 36, 2020 WL not stated
- State v. Sessions, 2014 UT 44, ¶ 21, 342 P.3d 738
- Harrington v. Richter, 562 U.S. 86, 111-12 (2011)
- State v. Gallegos, 2018 UT App 192, ¶¶ 22, 25-29, 47-48, 56, 70, 437 P.3d 388