

SUPREME COURT OF WASHINGTON

State v. Wingate, 155 Wash. 2d 817

122 P.3d 908 (2005) · No. No. 76325-9 · Decided November 10, 2005

SUMMARY

The Supreme Court of Washington held that the trial court properly gave a first aggressor instruction in Joshua Wingate's assault prosecution. Because conflicting evidence supported the conclusion that Wingate's conduct precipitated the confrontation, the court reversed the Court of Appeals and remanded for consideration of the remaining issues.

CASE DETAILS

COURT	Supreme Court of Washington
JURISDICTION	Washington
DECIDED	November 10, 2005
DOCKET	No. 76325-9
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review of a published Court of Appeals decision reversing Wingate's first- and second-degree assault convictions based in part on the trial court's first-aggressor jury instruction.
STANDARD OF REVIEW	Whether the evidence supported giving a jury instruction is evaluated by viewing the supporting evidence in the light most favorable to the party requesting the instruction. The Supreme Court reviewed the propriety of the first-aggressor instruction and the Court of Appeals' decision.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; binding statewide precedent.
PARTIES	State of Washington v. Joshua M. Wingate

TOPICS

- jury instructions
- self defense
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- criminal defense
- appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence supported giving a first-aggressor jury instruction.
2. Whether an intentional act reasonably likely to provoke a belligerent response can support a first-aggressor instruction even without proof that the defendant engaged in unlawful conduct.
3. Whether conflicting evidence about who precipitated the confrontation warranted the instruction.

HOLDINGS

1. The trial court properly gave the first-aggressor instruction because conflicting evidence supported a reasonable interpretation that Wingate's conduct precipitated the confrontation.
2. A first-aggressor instruction does not require that the defendant's conduct before the assault be independently wrongful or unlawful; an intentional act reasonably likely to provoke a belligerent response is sufficient.

KEY QUOTATIONS

“An aggressor instruction is appropriate if there is conflicting evidence as to whether the defendant's conduct precipitated a fight.” (¶ 17)

“Craig holds that one who provoked the altercation cannot invoke the right of self-defense.” (¶ 16)

FACTUAL BACKGROUND

Joshua Wingate was present when Stephen Park arrived at a friend's house to confront another man. Wingate testified that Park had displayed or possessed a sawed-off shotgun and that Wingate drew his handgun to obtain the shotgun and prevent a shooting. During the ensuing confrontation, Wingate shot Park in the leg after Park moved toward him, although Park was unarmed. Wingate was also convicted of assaulting three of Park's companions by pointing his firearm at them.

PROCEDURAL HISTORY

Wingate was convicted of first-degree assault and three counts of second-degree assault, with firearm enhancements, after shooting Stephen Park and pointing a firearm at Park's companions. The trial court gave a first-aggressor instruction over the defense objection. The Court of Appeals reversed, holding that the evidence did not warrant the instruction. The Washington Supreme Court granted review on that issue, reversed the Court of Appeals, and remanded for consideration of the issues the Court of Appeals had not reached.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals was directed to address the issues raised by Wingate that it had not reached in its first decision, including ineffective assistance of counsel, insufficient evidence, and prosecutorial misconduct.

CASES CITED

- State v. Riley, 137 Wash. 2d 904, 976 P.2d 624 (1999)
- State v. Brower, 43 Wash. App. 893, 721 P.2d 12 (1986)
- State v. Arthur, 42 Wash. App. 120, 708 P.2d 1230 (1985)
- State v. Craig, 82 Wash. 2d 777, 514 P.2d 151 (1973)
- State v. Davis, 119 Wash. 2d 657, 835 P.2d 1039 (1992)
- State v. Fernandez-Medina, 141 Wash. 2d 448, 6 P.3d 1150 (2000)

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