

SUPREME COURT OF GEORGIA

Anthony v. State

No. S21A0089, Supreme Court of Georgia (April 19, 2021)

SUMMARY

The Supreme Court of Georgia affirmed Anthony's murder and robbery convictions, rejecting his claims of ineffective assistance of counsel under *\*Strickland v. Washington\**. Trial counsel's strategic decisions—declining a mistrial after the State mistakenly indicted Anthony as a convicted felon, allowing Anthony to testify and admit involvement, and conceding guilt on armed robbery and firearm possession in closing argument to preserve credibility and focus on contesting malice murder—were not objectively unreasonable. The court held that conceding guilt on lesser charges as a trial strategy does not require the defendant's explicit consent and is not the functional equivalent of a guilty plea, citing *\*Florida v. Nixon\** and *\*McCoy v. Louisiana\**.

CASE DETAILS

|                       |                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                     |
| WRITING FOR THE COURT | Warren                                                                                       |
| JURISDICTION          | Georgia                                                                                      |
| DECIDED               | April 19, 2021                                                                               |
| DOCKET                | S21A0089                                                                                     |
| DISPOSITION           | affirmed                                                                                     |
| PROCEDURAL POSTURE    | Appeal from denial of motion for new trial after conviction in Fulton County Superior Court. |
| STANDARD OF REVIEW    | Strickland v. Washington standard for ineffective assistance of counsel                      |
| PRECEDENTIAL VALUE    | Published                                                                                    |
| PARTIES               | Terrone Anthony v. The State                                                                 |

TOPICS

- criminal procedure
- ineffective assistance
- right to counsel
- appellate procedure
- standard of review

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for not seeking a mistrial after the State discovered the indictment mistakenly alleged Anthony was a convicted felon.

2. Whether trial counsel was ineffective for putting Anthony on the witness stand to admit guilt.
3. Whether trial counsel was ineffective for failing to argue meaningfully in closing argument.
4. Whether trial counsel was ineffective for conceding guilt of armed robbery in closing argument.

## HOLDINGS

1. Trial counsel's decision to request a curative instruction instead of a mistrial was a reasonable strategic decision, and thus not deficient performance.
2. Anthony failed to show deficient performance because trial counsel recommended against testifying, and the trial court credited counsel's testimony that he never informed counsel about an alternative drug-debt theory.
3. Trial counsel's closing argument was strategic and not objectively unreasonable; it was a reasonable defense strategy to concede guilt on lesser charges to maintain credibility and argue against murder charges.
4. Trial counsel's concession of guilt on armed robbery was a strategic decision, not a guilty plea, and did not require Anthony's consent under Nixon and McCoy. The strategy was not objectively unreasonable.

## KEY QUOTATIONS

*"[A]t the commencement of this trial, I read the indictment to you, and I read to you a charge that alleged that Mr. Terrone Anthony was a convicted felon and a charge of felony murder as to Mr. Terrone Anthony based upon the claim that he was a convicted felon. Let me now advise you that the State has advised me that count 8 is a mistake. Terrone Anthony is actually not a convicted felon, so this count is now removed from your consideration in this indictment, as is count 3, which is the felony murder charge based upon that claim. You are, therefore, not to consider either of these charges. You are to disregard anything that I might have read to you or said to you associated with those charges because they are, in fact, a mistake by the State."* (6)

*"I don't have a defense. None whatsoever. Not at all. A defense is, I wasn't involved. My client was involved. His gun, his bullet, his hand. He fired the fatal shot. I don't have a defense. Not at all. None whatsoever."* (11)

*"And he's wrong for that and guilty of armed robbery, so we don't even have to talk about that. So when you go back in the back, you just check that off; guilty of armed robbery. That's Count Number 5. He's guilty of possession of a firearm during the commission of a felony. Just check that off. He's guilty of that. He told you that."* (14)

## FACTUAL BACKGROUND

On December 4, 2009, Anthony and an accomplice entered a liquor store where McKibben was working. Anthony, wearing a ski mask, pointed a firearm at McKibben while the accomplice searched McKibben's pockets and took belongings. A shoot-out ensued when the store owner fired at Anthony, striking him in the leg. Anthony fired back, hitting McKibben three times, causing his death. Anthony was found near the scene, bleeding, wearing the same camouflage jacket described by witnesses. He testified at trial and admitted his involvement but denied intent to kill.

## PROCEDURAL HISTORY

Anthony was indicted in Fulton County for malice murder, felony murder, armed robbery, aggravated assault, and firearm offenses. At trial, the court directed verdicts on some counts. The jury found Anthony guilty of malice murder, armed robbery, and possession of a firearm during a felony. The trial court sentenced him to life plus consecutive terms. He filed a motion for new trial, which was amended and denied. He appealed to the Supreme Court of Georgia.

#### DISPOSITION

affirmed

#### CASES CITED

- Strickland v. Washington, 466 U.S. 668 (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)
- Lynn v. State, 310 Ga. 608, 613-614 (852 SE2d 843) (2020)
- State v. Goff, 308 Ga. 330, 335 (840 SE2d 359) (2020)
- Brooks v. State, 305 Ga. 600, 607-608 (826 SE2d 45) (2019)
- Hills v. State, 306 Ga. 800, 807 (833 SE2d 515) (2019)
- Merritt v. State, 310 Ga. 433, 435 (851 SE2d 555) (2020)
- Styles v. State, 308 Ga. 624, 629 (842 SE2d 869) (2020)
- Blackwell v. State, 302 Ga. 820, 825-826 (809 SE2d 727) (2018)
- Muller v. State, 284 Ga. 70, 71 (663 SE2d 206) (2008)
- Darville v. State, 289 Ga. 698, 702 (715 SE2d 110) (2011)
- Florida v. Nixon, 543 U.S. 175 (2004)
- Hendrix v. State, 298 Ga. 60, 64 n.3 (779 SE2d 322) (2015)
- Harris v. State, Case No. A20A2054, 2021 WL 854897 (Ga. Ct. App. Mar. 8, 2021)
- McCoy v. Louisiana, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1500 (2018)
- Favors v. State, 296 Ga. 842, 846 (770 SE2d 855) (2015)
- Davenport v. State, 309 Ga. 385, 399 (846 SE2d 83) (2020)

#### CITED IN

- Anthony v. State, Anthony v. State, 311 Ga. 293, 298 (2021)
- Anthony v. State, Anthony v. State, 311 Ga. 293, 298 (2021)

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