

SUPREME COURT OF GEORGIA

Westmoreland v. State; Williams v. State

287 Ga. 688 (2010) (Ga. 2010) · No. S10A0365, S10A0367 · Decided June 28, 2010

SUMMARY

The Supreme Court of Georgia affirmed the convictions and denial of motions for new trial for Amos Westmoreland and John Edgar Williams, who were convicted of felony murder and related offenses arising from a police pursuit following burglaries. The court held that the homicide occurred within the res gestae of the burglary because it occurred during continuous flight from the crime scene, and it rejected challenges concerning sufficiency of the evidence, pursuit policy evidence, severance, hearsay, prosecutorial argument, and ineffective assistance of counsel.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Thompson, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	June 28, 2010
DOCKET	S10A0365, S10A0367
DISPOSITION	affirmed
PROCEDURAL POSTURE	Westmoreland and Williams appealed from the denial of their respective motions for new trial following their joint convictions for felony murder and multiple other crimes.
STANDARD OF REVIEW	The sufficiency of the evidence was reviewed under whether any rational trier of fact could have found the defendants guilty beyond a reasonable doubt. Evidentiary and severance rulings were reviewed for abuse of discretion, and ineffective-assistance claims under Strickland v. Washington. Unpreserved claims were reviewed only under applicable plain-error principles, where available.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Amos Westmoreland, John Edgar Williams v. The State

TOPICS

criminal procedure

appellate procedure

evidence

hearsay

ineffective assistance

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

evidence

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Westmoreland's felony-murder conviction when the fatal collision occurred during flight from the burglary.
2. Whether the police pursuit was an intervening cause of the collision and whether the evidence established reckless disregard under OCGA § 40-6-6(d).
3. Whether the trial court improperly restricted Westmoreland's cross-examination concerning the county vehicle-pursuit policy.
4. Whether Westmoreland received ineffective assistance for failing to investigate or present the pursuit policy and its addendum.
5. Whether the evidence was sufficient to convict Williams as a party to the crimes despite his status as a passenger.
6. Whether Williams could be convicted as a party to attempting to elude an officer and failing to secure a load.
7. Whether the trial court abused its discretion by denying Williams's motion to sever.
8. Whether Westmoreland's hearsay statement exculpating Williams was admissible under Georgia's co-conspirator declaration statute.
9. Whether the grand-jury preliminary instruction improperly commented on the evidence.
10. Whether the prosecutor's victim-related closing argument required a new trial.
11. Whether Williams received ineffective assistance for counsel's failure to object to the closing argument and testimony concerning other burglaries.
12. Whether the trial court erred in admitting unspecified photographs.

HOLDINGS

1. A homicide committed during continuous flight from the scene of a burglary remains within the res gestae of the underlying felony until the perpetrators reach a place of seeming security or are no longer pursued. Because the police continuously pursued the station wagon from the burglary area through the fatal collision, the evidence supported Westmoreland's felony-murder conviction.
2. The evidence was sufficient for a rational trier of fact to reject the police pursuit as an intervening cause and to find Westmoreland guilty beyond a reasonable doubt. Under OCGA § 40-6-6(d)(2), an officer's pursuit is not a proximate or contributing proximate cause of injury or death caused by a fleeing suspect unless the officer acted with reckless disregard for proper law-enforcement procedures, and reckless disregard alone does not establish causation.
3. Westmoreland waived his challenge to the restriction on cross-examination by abandoning the questioning after the objection was sustained and failing to make a contemporaneous objection or proffer the desired questions.

4. Westmoreland failed to establish ineffective assistance because counsel's decision not to introduce the pursuit policy was an informed strategic decision, and there was no reasonable probability that presenting the policy addendum would have changed the result.
5. The evidence was sufficient to allow the jury to infer Williams's participation and criminal intent from his presence, companionship, conduct before and after the offenses, possession of stolen property, alteration of his appearance, and flight.
6. Williams could be found guilty as a party to attempting to elude an officer because a passenger who flees with the driver after the vehicle is stopped may be chargeable as a party to the crime. The evidence also supported a finding that he aided and abetted the failure to secure the stolen television.
7. The trial court did not abuse its discretion in denying severance because Williams failed to make the required threshold showing that Westmoreland would testify exculpatorily at a separate trial, and he did not demonstrate prejudice from the joint trial.
8. The trial court properly excluded Westmoreland's statement that Williams lacked knowledge of the burglary because OCGA § 24-3-5 permits conspirator declarations only against other conspirators and is not a vehicle for a conspirator to introduce exculpatory hearsay.
9. The remaining claims did not warrant reversal because the instructional claim and challenges to the closing argument were unpreserved, the challenged attorney decisions were reasonable strategy, and the photograph claim was inadequately specified for appellate review.

KEY QUOTATIONS

“A homicide is within the res gestae of the underlying felony for the purpose of the felony-murder rule if it is committed while fleeing the scene of the crime.” (17)

“While mere presence at the scene of the commission of a crime is not sufficient evidence to convict one of being a party thereto, presence, companionship, and conduct before and after the offense are circumstances from which one's participation in the criminal intent may be inferred.” (20)

“It is the long-standing rule in this state that declarations to third persons to the effect that the declarant and not the accused was the actual perpetrator are, as a rule, inadmissible.” (21)

FACTUAL BACKGROUND

On May 17, 2007, homes in Marietta, Georgia, were burglarized, and stolen property was placed in a blue station wagon occupied by Westmoreland and Williams. The driver refused to stop for police, fled onto Interstate 575, and crossed into oncoming traffic, where the station wagon collided with a Buick, killing Barbara Turner Robins and seriously injuring a passenger. Both defendants fled on foot and were apprehended with stolen property in their possession or in the vehicle.

PROCEDURAL HISTORY

The defendants were jointly indicted, tried, and convicted after a 2008 jury trial. Their motions for new trial, filed November 11, 2008 and later amended, were denied on April 15, 2009. The Supreme Court of Georgia consolidated the appeals and affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Collier v. State, 244 Ga. 553, 560(3), 261 S.E.2d 364 (1979)
- Horton v. State, 249 Ga. 871, 878(11), 295 S.E.2d 281 (1982)
- Thompson v. State, 263 Ga. 23(2), 426 S.E.2d 895 (1993)
- Diamond v. State, 267 Ga. 249(2), 477 S.E.2d 562 (1996)
- Thompson v. State, 277 Ga. 102(1), 586 S.E.2d 231 (2003)
- Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)
- Gober v. State, 249 Ga. App. 168, 172(3), 547 S.E.2d 656 (2001)
- Pinckney v. State, 285 Ga. 458, 459(2), 678 S.E.2d 480 (2009)
- Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- White v. State, 283 Ga. 566, 569(4), 662 S.E.2d 131 (2008)
- Phillips v. State, 277 Ga. 161, 587 S.E.2d 45 (2003)
- Crawford v. Thompson, 278 Ga. 517, 520, 603 S.E.2d 259 (2004)
- White v. State, 278 Ga. 499, 500(1), 604 S.E.2d 159 (2004)
- Cooper v. State, 281 Ga. App. 882, 884(2), 637 S.E.2d 480 (2006)
- Green v. State, 274 Ga. 686, 687(2), 558 S.E.2d 707 (2002)
- Jones v. State, 253 Ga. 640(2), 322 S.E.2d 877 (1984)
- Keener v. State, 215 Ga. App. 117, 118(1), 449 S.E.2d 669 (1994)
- Wilson v. State, 271 Ga. 811, 814(4), 525 S.E.2d 339 (1999)
- O'Kelley v. State, 284 Ga. 758(3), 670 S.E.2d 388 (2008)
- Dunbar v. State, 205 Ga. App. 867, 869, 424 S.E.2d 43 (1992)
- Catchings v. State, 256 Ga. 241(13), 347 S.E.2d 572 (1986)
- Parks v. State, 254 Ga. 403, 415 n. 9(13), 330 S.E.2d 686 (1985)
- Holmes v. State, 273 Ga. 644(5)(c), 543 S.E.2d 688 (2001)
- Milner v. State, 271 Ga. 578(2), 522 S.E.2d 654 (1999)
- Braithwaite v. State, 275 Ga. 884, 886(2)(b), 572 S.E.2d 612 (2002)
- Sweet v. State, 278 Ga. 320, 324(5), 602 S.E.2d 603 (2004)
- Wilbanks v. State, 251 Ga. App. 248, 268(19)(b), 554 S.E.2d 248 (2001)
- Luong v. Tran, 280 Ga. App. 15, 16(1), 633 S.E.2d 797 (2006)
- Malcolm v. State, 263 Ga. 369(5), 434 S.E.2d 479 (1993)