

SUPREME COURT OF GEORGIA

Gude v. State

831 S.E.2d 807 (Ga. 2019) · Decided August 5, 2019

SUMMARY

The Georgia Supreme Court affirmed Frederick Lee Gude's convictions for malice murder, felony murder predicated on aggravated assault, aggravated assault, and theft by taking. The court held that a duplicate recording of a voicemail was admissible under Georgia's duplicate-evidence rule and rejected Gude's ineffective-assistance claims concerning statements made after ingesting radiator fluid and the absence of expert testimony.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Justice Bethel
JURISDICTION	Georgia
DECIDED	August 5, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gude appealed his convictions and sentences for malice murder, felony murder predicated on aggravated assault, aggravated assault, and theft by taking, challenging admission of a tape-recorded voicemail and asserting ineffective assistance of trial counsel.
STANDARD OF REVIEW	The admission of the duplicate voicemail recording was reviewed for abuse of discretion. The ineffective-assistance claim was reviewed under Strickland v. Washington's deficient-performance and prejudice standard.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; precedential.
PARTIES	Frederick Lee Gude v. State

TOPICS

- evidence
- best evidence rule
- ineffective assistance
- due process
- fourteenth amendment

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate litigation

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting a copy of a tape-recorded voicemail under Georgia's best evidence provisions.
2. Whether trial counsel was ineffective for failing to move to suppress statements Gude made to his daughter after consuming radiator fluid as involuntary.
3. Whether trial counsel was ineffective for failing to obtain an expert to testify about the effect of suicidal ideation on Gude's mental state when he made the statements.

HOLDINGS

1. The duplicate voicemail recording was admissible because Gude did not raise a genuine question about the authenticity of the original and did not show that admitting the duplicate instead of the original would be unfair. Complaints about the duplicate's clarity and quality went to the weight of the evidence rather than admissibility.
2. Counsel was not ineffective for failing to move to suppress Gude's statements to his daughter because the statements were not involuntary within the meaning of the Fourteenth Amendment absent coercive police activity or state involvement.
3. Gude failed to establish ineffective assistance based on counsel's failure to obtain an expert because the proffered testimony was general and speculative and did not show that expert evidence would have been favorable or would probably have changed the trial outcome.

KEY QUOTATIONS

"A duplicate shall be admissible to the same extent as an original unless: (1) A genuine question is raised as to the authenticity of the original; or (2) A circumstance exists where it would be unfair to admit the duplicate in lieu of the original." (811)

"coercive police activity is a necessary predicate to a finding that a confession is involuntary within the meaning of the due process clause of the Fourteenth Amendment." (811-812)

"speculation about results if [he] had [been evaluated] is not enough." (812)

FACTUAL BACKGROUND

Jacquelyn Nash was found stabbed approximately 40 times in the home where she lived, and her vehicle was missing. Police later observed Gude leave his sister's residence in Nash's vehicle and recovered keys to Nash's home from him after he stopped and surrendered. Gude's daughter testified that he left a voicemail confessing to killing Nash over money and later gave conflicting accounts of Nash's whereabouts, stated that he had consumed radiator fluid, and sought money to flee to Florida. Physical evidence also linked Gude's DNA to amylase on a cigarette butt found at the crime scene.

PROCEDURAL HISTORY

A Fulton County grand jury indicted Gude in 2004 on multiple charges arising from Jacquelyn Nash's death. After a February 2013 trial, the jury convicted him of malice murder, felony murder predicated on aggravated

assault, aggravated assault, and theft by taking, and acquitted him of the remaining charges. The trial court sentenced him to life without parole for malice murder and ten consecutive years for theft by taking; it merged the aggravated-assault conviction into the malice-murder conviction and the felony-murder count was vacated by operation of law. The trial court denied Gude's amended motion for new trial, and the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Gude v. State, 289 Ga. 46, 709 S.E.2d 206 (2011)
- Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)
- Evans v. State, 288 Ga. 571, 573 (3), 707 S.E.2d 353 (2011)
- Greater Kansas City Laborers Pension Fund v. Thummel, 738 F.2d 926, 928 (8th Cir. 1984)
- Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)
- Crouch v. State, 305 Ga. 391, 397 (3), 825 S.E.2d 199 (2019)
- Nelms v. State, 255 Ga. 473, 474 (1), 340 S.E.2d 1 (1986)
- Blackburn v. Alabama, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960)
- Oubre v. Woldemichael, 301 Ga. 299, 307 (2)(b), 800 S.E.2d 518 (2017)
- Colorado v. Connelly, 479 U.S. 157, 165 (II), 107 S.Ct. 515, 93 L.Ed.2d 473 (1986)
- Hampton v. State, 282 Ga. 490, 492 (2)(a), 651 S.E.2d 698 (2007)
- Mims v. State, 304 Ga. 851, 856 (2)(a), 823 S.E.2d 325 (2019)
- Coley v. State, 305 Ga. 658, Coley v. State, 305 Ga. 658, 665 (6)(b), 827 S.E.2d 241 (2019)
- Malcolm v. State, 263 Ga. 369, 371-372 (4), 434 S.E.2d 479 (1993)

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