

SUPREME COURT OF GEORGIA

Savior v. State, 284 Ga. 488

668 S.E.2d 695 (2008) · No. S08A0807 · Decided October 27, 2008

SUMMARY

The Supreme Court of Georgia affirmed Mustafa Savior’s convictions for malice murder and possession of a firearm during the commission of a crime arising from a nightclub shooting. The court rejected his claims of ineffective assistance of counsel, error concerning jury recharges, and failure to give a mutual-combat instruction.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Sears, Chief Justice
JURISDICTION	Georgia
DECIDED	October 27, 2008
DOCKET	S08A0807
DISPOSITION	affirmed
PROCEDURAL POSTURE	Savior appealed his convictions for malice murder and possession of a firearm during the commission of a crime, including the denial of his amended motion for new trial asserting ineffective assistance of counsel and instructional error.
STANDARD OF REVIEW	The evidence is reviewed in the light most favorable to the verdict to determine whether a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. Ineffective-assistance claims require proof of deficient performance and prejudice, with counsel's conduct evaluated from counsel's perspective at the time and under the circumstances of trial. The court may resolve an ineffective-assistance claim solely on lack of prejudice. Challenges to jury instructions are reviewed based on the record and applicable preservation principles.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential within Georgia.
PARTIES	Mustafa Savior v. The State

TOPICS

ineffective assistance

jury instructions

criminal procedure

appellate procedure

evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

ineffective assistance of counsel

jury instructions

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Savior's convictions for malice murder and possession of a firearm during the commission of a crime.
2. Whether trial counsel was ineffective for failing to locate and subpoena Johnnie Pierce or seek admission of Pierce's statement under the necessity exception to the hearsay rule.
3. Whether trial counsel was ineffective for failing to preserve the pretrial statements of Antonio Gadsen and Charles Gordon.
4. Whether trial counsel was ineffective for failing to request jury charges on voluntary manslaughter, self-defense, and accident.
5. Whether the trial court erred in responding to the jury's request for a recharge on presence and intent.
6. Whether the trial court erred by failing to give a requested mutual-combat instruction.

HOLDINGS

1. The evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find Savior guilty beyond a reasonable doubt of malice murder and possession of a firearm during the commission of a crime.
2. Savior failed to establish prejudice from counsel's failure to locate Pierce, subpoena him, or seek admission of his statement because Pierce's statement did not identify who fired the shots and there was no reasonable probability of a different trial result.
3. Savior failed to show that counsel acted unreasonably by not recording the statements of Gadsen and Gordon, and failed to show a reasonable probability that preserving or using the statements would have changed the outcome.
4. Counsel was not ineffective for declining to request instructions inconsistent with the defense strategy and Savior's own testimony.
5. The trial court did not err because the record showed that it recharged the jury on the issues of presence and intent that the jury had requested.
6. Savior could not obtain appellate relief for failure to give a mutual-combat instruction because he did not request that instruction and had specifically requested that the court not charge on voluntary manslaughter.

KEY QUOTATIONS

“To prevail on this claim, Savior must show both that trial counsel provided deficient performance and that the deficient performance prejudiced his defense.” (at 698)

“Because defense “counsel is entitled to base the defense on the veracity of the client's assertions,” and because the requested instructions were inconsistent with Savior's claims, it was reasonable for counsel not to request the charges in question.” (at 699)

FACTUAL BACKGROUND

After a confrontation with Malcolm Brown at a Savannah nightclub, Savior remained outside with a firearm and threatened Brown. When Brown left the club, Savior became involved in a physical struggle, broke free, and fired several shots, striking Johnnie Pierce and fatally shooting bystander Brandon Ingram; he also attempted to shoot Brown, but the gun jammed. Savior fled to Hinesville and returned later that day to surrender, while at trial he denied firing the weapon.

PROCEDURAL HISTORY

A jury convicted Savior of malice murder and possession of a firearm during the commission of a felony and acquitted him of felony murder and carrying a concealed weapon. The trial court imposed a life sentence for malice murder and a consecutive five-year sentence for the possession offense. After the trial court denied his amended motion for new trial, it granted an out-of-time appeal, and the Supreme Court of Georgia reviewed the case on briefs.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Terry v. State, 284 Ga. 119, 120, 663 S.E.2d 704 (2008)
- Smith v. Francis, 253 Ga. 782, 783, 325 S.E.2d 362 (1985)
- Strickland v. Washington, 466 U.S. 668, 697, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- Rivers v. State, 283 Ga. 1, 4-5, 655 S.E.2d 594 (2008)
- Sparks v. State, 277 Ga. 72, 74-75, 586 S.E.2d 645 (2003)
- Styles v. State, 279 Ga. 134, 136, 610 S.E.2d 23 (2005)
- Sinkfield v. State, 266 Ga. 726, 727, 470 S.E.2d 649 (1996)
- Smith v. State, 267 Ga. 372, 375, 477 S.E.2d 827 (1996)