

SUPREME COURT OF GEORGIA

Browning v. State, 283 Ga. 528

661 S.E.2d 552 (2008) · No. S08A0541 · Decided May 19, 2008

SUMMARY

The Supreme Court of Georgia affirmed Robert L. Browning's convictions for felony murder, aggravated assault, and possession of a firearm during the commission of a felony arising from the fatal shooting of William Roger Bryant. The court held that the evidence was sufficient and that trial counsel was not ineffective for failing to obtain a voluntary-manslaughter instruction or for the delay in pursuing post-trial relief. Applying the Barker v. Wingo factors, the court also concluded that the delay did not deny Browning due process.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                            |
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| COURT                 | Supreme Court of Georgia                                                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Hines, Justice                                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | Georgia                                                                                                                                                                                                                                                                                                                                                                                    |
| DECIDED               | May 19, 2008                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | S08A0541                                                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Browning appealed his convictions for felony murder, aggravated assault, and possession of a firearm during the commission of a felony, challenging the sufficiency of the evidence and the effectiveness of trial counsel. The Supreme Court of Georgia reviewed the denial of his amended motion for new trial and affirmed.                                                             |
| STANDARD OF REVIEW    | The sufficiency of the evidence was reviewed under whether any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. Ineffective-assistance claims required proof of deficient performance and resulting prejudice. The alleged due-process violation arising from post-trial delay was analyzed under the four Barker v. Wingo factors. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Georgia                                                                                                                                                                                                                                                                                                                             |
| PARTIES               | Robert L. Browning v. State                                                                                                                                                                                                                                                                                                                                                                |

TOPICS

criminal procedure

ineffective assistance

self defense

speedy trial

appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

ineffective assistance of counsel

appellate procedure

## QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Browning's convictions for felony murder, aggravated assault, and possession of a firearm during the commission of a felony.
2. Whether trial counsel was ineffective for failing to secure or pursue a jury instruction on voluntary manslaughter and for failing to request that the charge conference be recorded.
3. Whether trial counsel's failure to timely pursue Browning's motion for new trial caused an unconstitutional post-trial delay amounting to a denial of due process.

## HOLDINGS

1. The evidence was sufficient for a rational trier of fact to find Browning guilty beyond a reasonable doubt of felony murder, aggravated assault, and possession of a firearm during the commission of a felony.
2. Counsel was not ineffective for failing to obtain or pursue a voluntary-manslaughter instruction because the evidence did not authorize such an instruction.
3. Browning's claim that counsel was ineffective for failing to request that the charge conference be recorded was moot because the evidence did not support the requested voluntary-manslaughter instruction.
4. The lengthy delay in resolving Browning's motion for new trial did not deny him due process under the circumstances presented.

## KEY QUOTATIONS

*"The distinguishing characteristic between the two claims is whether the accused was so influenced and excited that he reacted passionately rather than simply in an attempt to defend himself."* (555)

*"But, even assuming that such factors are weighed in Browning's favor, he has failed to allege, much less establish, any prejudice as a result of the post-trial delay."* (556)

## FACTUAL BACKGROUND

On June 24, 1996, Browning approached William Roger Bryant outside a neighbor's home after a brief verbal exchange. Without physical contact and while Bryant was unarmed, Browning shot him in the head with a .22 caliber revolver, killing him. Browning returned home, told his wife that he had shot Bryant, and called 911. At trial, Browning claimed that he acted in self-defense, asserting that Bryant had advanced toward him and threatened to cause him serious harm.

## PROCEDURAL HISTORY

A jury tried Browning on charges arising from the shooting death of William Roger Bryant. The jury acquitted him of malice murder but convicted him of felony murder, aggravated assault, and possession of a firearm during the commission of a felony, and the trial court imposed consecutive sentences. After a lengthy post-trial delay, Browning filed pro se motions in 2007, obtained new counsel, and pursued an amended motion for new trial. The trial court denied the motion for new trial and separately vacated the aggravated-assault sentence because that offense merged with felony murder for sentencing purposes. Browning appealed to the Supreme Court of Georgia, which affirmed.

#### DISPOSITION

affirmed

#### CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)
- Sanders v. State, 283 Ga. 372, 374, 659 S.E.2d 376 (2008)
- Walker v. State, 281 Ga. 521, 524-25, 640 S.E.2d 274 (2007)
- Joyner v. State, 212 Ga. 269, 270, 91 S.E.2d 607 (1956)
- Nelson v. State, 283 Ga. 119, 121, 657 S.E.2d 201 (2008)
- Miller v. State, 283 Ga. 412, 658 S.E.2d 765 (2008)
- Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)
- Chatman v. Mancill, 280 Ga. 253, 256-57, 626 S.E.2d 102 (2006)
- State v. Heath, 277 Ga. 337, 339, 588 S.E.2d 738 (2003)