In the Supreme Court of Georgia

Decided: February 5, 2018

S17A1748. GOODRUM v. THE STATE.

GRANT, Justice.

Following a jury trial in the Superior Court of Troup County, Georgia, Demario Goodrum was found guilty of felony murder and related offenses in connection with the shooting death of Tarvanisha Boyd. In this appeal, Goodrum argues that the trial court violated his constitutional right to be present at all critical stages of his trial, and that he received ineffective assistance of trial counsel. We disagree, and therefore affirm. [1]

[1] The victim was killed on December 12, 2014. On March 11, 2015, Goodrum was indicted by a Troup County grand jury for malice murder (Count 1), felony murder predicated on aggravated assault (Count 2), aggravated assault by shooting Boyd with a gun (Count 3), possession of a firearm during the commission of a felony (Count 4), possession of a firearm by a convicted felon during the commission of a crime (Count 5), driving under the influence (less safe) (Count 6), driving under the influence (per se) (Count 7), and failure to stop at a stop sign (Count 8). At the conclusion of a trial held December 15-17, 2015, the jury acquitted Goodrum of malice murder but found him guilty of Counts 2-4, 6, and 8. Counts 5 and 7 were nolle prossed by the State. The trial court sentenced Goodrum to imprisonment for life without parole for Count 2, 5 years consecutive for Count 4, 12 months concurrent for Count 6, and 12 months concurrent for Count 8. Count 3 merged with Count 2 for sentencing. See *Green v. State*, 283 Ga. 126, 130 (657 SE2d 221) (2008). On December 21, 2015, Goodrum filed a motion for new trial, which he amended on October 20, 2016, after the appearance of new counsel. Following a hearing, the trial court

I.

Viewed in the light most favorable to the verdicts, the evidence showed that, in December 2014, Boyd and Kristal Sinkfield hosted a party at their home. Boyd, Sinkfield, Goodrum, and several others were in the kitchen playing cards when Goodrum and Boyd got into a heated argument. The two exchanged blows, and Sinkfield stepped between them and pushed Goodrum back. According to Goodrum's testimony at trial, the entire group of people then advanced toward him, backing him up against the stove. Goodrum also claimed that he saw someone hand Boyd a gun, but four eyewitnesses testified that neither Boyd nor anyone else in the room besides Goodrum had a gun that night. Goodrum pulled out a 9 millimeter handgun and shot Boyd in the chest; he then ran out of the house, got into his car, and drove away. Later that night, police investigators found several .40 caliber cartridges, a .380 bullet, and a .25 caliber casing in the front yard, and a possible bullet hole in Goodrum's car. Boyd was taken to the hospital, but later died from the gunshot wound to the chest.

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denied the motion for new trial on November 10, 2016. Goodrum filed a timely notice of appeal on November 15, 2016, and the case was docketed in this Court to the August 2017 term and submitted for a decision on the briefs.

Police officer William Jones was responding to Sinkfield's 911 call when he saw Goodrum run a stop sign and crash into an elementary school. Officer Jones stopped and questioned Goodrum, who said he had been at a party with his brother-in-law when "they" started shooting, so he left. When Officer Jones asked who was shooting, Goodrum said he didn't know. Goodrum smelled strongly of alcohol and his speech was slow and slurred.

Although Goodrum does not challenge the sufficiency of the evidence admitted at trial, it is our practice in murder cases to review the record and determine whether the evidence was legally sufficient under the standard set out in *Jackson v. Virginia*, 443 U.S. 307 (99 SCt 2781, 61 LE2d 560) (1979). Having done so, we conclude that the evidence introduced at trial and summarized above was legally sufficient to authorize a rational trier of fact to find beyond a reasonable doubt that Goodrum was guilty of the crimes for which he was convicted. See id. at 319.

II.

Goodrum contends that his state constitutional right to be present at all critical stages of the trial proceedings was violated when the trial court dismissed one of the trial jurors after a discussion in chambers at which

Goodrum was not present. Goodrum is incorrect because the discussion in chambers was a legal one in which he could not have meaningfully engaged.

After closing arguments, the State challenged the competency of one of the trial jurors, who was a convicted felon. The trial court discussed the matter with counsel for Goodrum and the State, as well as with the juror, in chambers. Goodrum was not present. The juror acknowledged that he had been convicted of a felony, but believed that his civil rights had been restored. Some effort was made to contact the jurisdiction where the felony conviction had been entered, but the trial court was unable to confirm that the juror's civil rights had been restored and ultimately excused the juror for cause, pursuant to OCGA § 15-12-163. The trial court then announced in open court that an issue had arisen that made it necessary to dismiss the juror and replace him with the alternate. Although this fact is not dispositive, we note that there is no indication in the record that Goodrum objected to the juror's dismissal or asked any questions at the time of the announcement.

The constitutional right to be present at trial "attaches 'at any stage of a criminal proceeding that is critical to its outcome if [the defendant's] presence would contribute to the fairness of the procedure.'" *Huff v. State*, 274 Ga. 110, 111 (549 SE2d 370) (2001) (quoting *Kentucky v. Stincer*, 482 U.S. 730, 745

(107 SCt 2658, 96 LE2d 631) (1987)). But the right to be present does ***not*** extend to conferences involving the discussion of questions of law "about which the defendant presumably has no knowledge" and to which the accused can make no meaningful contribution. Id.; see *Heywood v. State*, 292 Ga. 771, 774 (743 SE2d 12) (2013) ("[T]he constitutional right to be present does not extend to situations where the defendant's 'presence would be useless, or the benefit but a shadow.'") (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105–107 (54 SCt 330, 78 LE 674 (1934)). The defendant's presence at such conferences bears no "reasonably substantial relation to the fullness of opportunity to defend against the charge," and his absence will not affect the fairness and justice of the proceedings. *Campbell v. State*, 292 Ga. 766, 770 (740 SE2d 115) (2013) (citation and punctuation omitted).

Here, the discussion in chambers concerned the legal question of a juror's competence to serve under OCGA §§ 15-12-40 and 15-12-163 (b) (5) & (c). There was no question of juror bias, relationship to the parties, misconduct, concern related to the evidence in the case, or any other issue to which Goodrum could have made a meaningful contribution. Cf. *Zamora v. State*, 291 Ga. 512, 517-518 (731 SE2d 658) (2012) (defendant had a right to be present at discussions regarding the dismissal of a juror who lied during jury

selection); *Sammons v. State*, 279 Ga. 386, 388 (612 SE2d 785) (2005) (defendant's right to be present violated when the court questioned a juror outside the presence of the defendant and counsel and dismissed the juror for reasons related to the evidence in the case). Goodrum's trial counsel conceded that Goodrum had no knowledge of whether the juror's civil rights actually had been restored, and there is no indication that Goodrum otherwise could have contributed meaningfully to the legal discussion. Under the circumstances presented in this case, Goodrum's constitutional right to be present was not violated. See *Leeks v. State*, 296 Ga. 515, 519 (769 SE2d 296) (2015) (right to be present not violated by the defendant's absence from a conference with counsel about a jury note, where appellant could not have contributed meaningfully to the discussion and his presence would not have contributed to the fairness of the proceeding).

III.

Goodrum also alleges that his trial counsel provided ineffective assistance when he failed to object to portions of the State's closing argument. To succeed on this claim, Goodrum must show that trial counsel's performance was deficient and that he was prejudiced by his attorney's errors. *Strickland v. Washington*, 466 U.S. 668, 687 (104 SCt 2052, 80 LE2d 674) (1984). In order

to meet the first prong of the *Strickland* test, Goodrum must "overcome the 'strong presumption' that counsel's performance fell within a 'wide range of reasonable professional conduct,' and that counsel's decisions were 'made in the exercise of reasonable professional judgment.'" *Simmons v. State*, 299 Ga. 370, 375 (788 SE2d 494) (2016) (citations omitted). Decisions made as a matter of trial strategy and tactics do not amount to ineffective assistance of counsel unless "they were so patently unreasonable that no competent attorney would have followed such a course." Id.; see *Scott v. State*, 290 Ga. 883, 889 (725 SE2d 305) (2012).

To meet the second prong, prejudice, Goodrum must show that there is a reasonable probability that, but for the deficiency in counsel's performance, the outcome of the trial would have been different. *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. The failure to make the required showing on either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim. *Trimble v. State*, 297 Ga. 180, 183 (773 SE2d 188) (2015).

During the State's closing argument, the prosecutor argued that if Goodrum really had shot Boyd in self-defense, he would have called 911 after the shooting. Goodrum contends that the prosecutor's comments violated the

"bright line rule" articulated in *Mallory v. State*, 261 Ga. 625 (409 SE2d 839) (1991), overruled on other grounds as recognized in *Clark v. State*, 271 Ga. 6, 10 (515 SE2d 155) (1999), in which this Court cited a former rule of evidence and held that it is impermissible to comment on a criminal defendant's pre-arrest silence, even where the accused had not received *Miranda* warnings and where the defendant testifies at trial (as Goodrum did).[2] But here the issue relevant to Goodrum's ineffective assistance claim is not whether the prosecutor's comments were improper; rather, the question is whether counsel's decision not to object to the comments was objectively unreasonable under the circumstances of the case and in light of prevailing professional norms. See *Hartsfield v. State*, 294 Ga. 883, 887 (757 SE2d 90) (2014). We cannot say that it was.

At the motion for new trial hearing, Goodrum's trial counsel testified that he chose not to object to the prosecutor's comments because he thought that the argument was "absurd," given the short—and evidently eventful—period of time between the shooting and Goodrum's arrest. Instead of

[2] To date, this Court has declined to decide *Mallory's* continuing validity under the current Evidence Code. See, e.g. *Dublin v. State*, 302 Ga. 60, 62 (805 SE2d 27) (2017). As a decision on that issue is not necessary to resolve Goodrum's appeal, we again decline to examine it here.

objecting during the State's argument, counsel responded by highlighting the absurdity of the argument in his own closing—pointing out that Goodrum had fled from the house in a hail of bullets and crashed only a few blocks away, after which the police arrived within seconds. Goodrum has not shown that this tactical decision was "so patently unreasonable that no competent attorney would have followed such a course." *Simmons*, 299 Ga. at 375; see *Smith v. State*, 296 Ga. 731, 735-736 (770 SE2d 610) (2015) (counsel's decision to remain silent and comment on prosecutor's closing argument "theatrics" in his own closing did not amount to ineffective assistance). His claim of ineffective assistance therefore fails.

Judgment affirmed. All the Justices concur.