

SUPREME COURT OF MISSISSIPPI

Terry Dora v. State of Mississippi

986 So. 2d 917 (Miss. 2008) · No. No. 2005-CT-00487-SCT · Decided June 12, 2008

SUMMARY

The Supreme Court of Mississippi reversed the Court of Appeals and reinstated Terry Dora's conviction and sentence for possessing more than thirty grams of cocaine. The court held that the prosecutor's rebuttal argument concerning the lack of contradictory evidence did not improperly comment on Dora's failure to testify and did not warrant a mistrial. The court also declined to remand for a constitutional speedy-trial hearing because Dora raised the issue for the first time on appeal and failed to establish plain error or a miscarriage of justice.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Smith, Chief Justice; Easley, Justice; Carlson, Justice; Lamar, Justice; Dickinson, Justice; Waller, Presiding Justice; Diaz, Presiding Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	June 12, 2008
DOCKET	No. 2005-CT-00487-SCT
DISPOSITION	reversed
PROCEDURAL POSTURE	The State petitioned the Supreme Court of Mississippi for certiorari review of the Court of Appeals' decision reversing Dora's conviction and remanding for a new trial and a constitutional speedy-trial hearing.
STANDARD OF REVIEW	Denial of a motion for mistrial based on prosecutorial misconduct is reviewed for abuse of discretion. The propriety of prosecutorial closing argument is evaluated by whether its natural and probable effect was to create unjust prejudice resulting in a decision influenced by that prejudice. A constitutional speedy-trial claim raised for the first time on appeal is reviewed, if at all, for plain error.
PRECEDENTIAL VALUE	Published, precedential Mississippi Supreme Court opinion
PARTIES	State of Mississippi v. Terry Dora

TOPICS

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prosecutorial misconduct

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the prosecutor's rebuttal statement that the evidence was undisputed and that nobody had denied Dora offered Rebecca \$5,000 to take the rap improperly commented on Dora's failure to testify and required a mistrial.
2. Whether the Court of Appeals properly remanded for a constitutional speedy-trial hearing when Dora raised the issue for the first time on appeal.
3. Whether any error in the jury instruction omitting the character-of-the-substance element required reversal.

HOLDINGS

1. The prosecutor's rebuttal argument was a permissible comment on the absence of evidence supporting Dora's defense, not an impermissible comment on Dora's failure to testify or an implication that his silence proved guilt. The circuit court therefore did not abuse its discretion by denying the motion for mistrial.
2. The Court of Appeals erred by treating remand for a constitutional speedy-trial hearing as mandatory whenever the claim is first raised on appeal. The appellate court must first determine whether plain-error review is justified, and Dora's assertions did not establish plain error or a miscarriage of justice.
3. The omission of the character-of-the-substance element from the possession instruction was error, but it was harmless beyond a reasonable doubt because the evidence clearly established every element of the offense.

KEY QUOTATIONS

"What is prohibited is any reference to the defendant's failure to testify implying that such failure is improper, or that it indicates the defendant's guilt." (923)

"Absent the plain-error criteria being satisfied unequivocally, appellate courts are loath to address issues not presented to the trial court." (925)

FACTUAL BACKGROUND

Police executed a search warrant at a house where suspected drug sales had occurred and saw Dora exiting a bathroom. They found 35.63 grams of crack cocaine in a garbage can beneath tissue paper in the bathroom, cash and digital scales nearby, and additional drugs and cash in Dora's aunt's bedroom. Dora's aunt testified that Dora offered her \$5,000 to take responsibility for the bathroom drugs, and her daughter corroborated the account. After conviction, Dora received a sixty-year habitual-offender sentence and a \$2,000,000 fine.

PROCEDURAL HISTORY

A jury convicted Dora of possessing more than thirty grams of cocaine, and the Circuit Court of Lowndes County sentenced him to sixty years as a habitual offender and prior violator of the Mississippi Uniform Controlled Substances Act, plus a \$2,000,000 fine. The Mississippi Court of Appeals reversed and remanded for a new trial based on the prosecutor's rebuttal argument and ordered a speedy-trial hearing. The Supreme Court of Mississippi granted certiorari, reversed the Court of Appeals, and reinstated and affirmed the circuit court's judgment.

DISPOSITION

reversed

CASES CITED

- Hiter v. State, 660 So. 2d 961, 966 (Miss. 1995)
- Ormond v. State, 599 So. 2d 951, 961 (Miss. 1992)
- Sheppard v. State, 777 So. 2d 659, 661 (Miss. 2000)
- Shelton v. State, 853 So. 2d 1171, 1183 (Miss. 2003)
- Pulphus v. State, 782 So. 2d 1220, 1222 (Miss. 2001)
- United States v. Robinson, 485 U.S. 25, 31-34 (1988)
- Griffin v. California, 380 U.S. 609, 615 (1965)
- Wright v. State, 958 So. 2d 158, 161, 164-67 (Miss. 2007)
- Jimpson v. State, 532 So. 2d 985, 991 (Miss. 1988)
- Shook v. State, 552 So. 2d 841, 851 (Miss. 1989)
- Ladner v. State, 584 So. 2d 743, 754 (Miss. 1991)
- United States v. Hasting, 461 U.S. 499, 515 (1983)
- Thomas v. State, 247 Miss. 704, 712, 159 So. 2d 77, 80 (1963)
- Guice v. State, 952 So. 2d 129, 139 (Miss. 2007)
- State v. Woodall, 744 So. 2d 747, 749-50 (Miss. 1999)
- State v. Woodall, 801 So. 2d 678, 685 (Miss. 2001)
- Sanders v. State, 678 So. 2d 663, 670-71 (Miss. 1996)
- Morgan v. State, 793 So. 2d 615, 617 (Miss. 2001)
- Klopfer v. North Carolina, 386 U.S. 213 (1967)
- Bell v. State, 733 So. 2d 372, 376 (Miss. Ct. App. 1999)
- Miller v. State, 956 So. 2d 221, 225 n.10 (Miss. 2007)
- Carr v. State, 208 So. 2d 886, 889 (Miss. 1968)