

SUPREME COURT OF MISSISSIPPI

Turner v. State

818 So. 2d 1181 (Miss. 2002) · No. No. 1999-KA-00411-SCT · Decided June 6, 2002

SUMMARY

The Supreme Court of Mississippi affirmed Kelvin Turner's conviction for aggravated assault upon a law enforcement officer and his thirty-year sentence as a habitual offender. The court held that the evidence was sufficient, that conflicts in witness testimony were for the jury to resolve, and that the challenge to the admission and use of prior convictions was procedurally barred and meritless.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, Justice; Smith, P.J.; Waller, J.; Cobb, J.; Pittman, C.J.; McRae, P.J.; Diaz, J.; Easley, J.; Carlson, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	June 6, 2002
DOCKET	No. 1999-KA-00411-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Turner appealed his jury conviction for aggravated assault upon a law enforcement officer and his thirty-year sentence as a habitual offender without parole. The Supreme Court considered his counsel's supplemental appellate brief under procedures adopted after overruling Killingsworth and independently reviewed his pro se assignments of error.
STANDARD OF REVIEW	For a legal-sufficiency challenge, the court considers all evidence in the light most consistent with the verdict, gives the prosecution the benefit of all favorable reasonable inferences, and will reverse only if the facts and inferences point toward the accused with such force that reasonable jurors could not have found guilt beyond a reasonable doubt. Conflicts and inconsistencies in testimony are ordinarily resolved by the jury, whose credibility determinations are not disturbed on appeal. An unobjected-to evidentiary or closing-argument issue is procedurally barred when raised for the first time on appeal.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.

TOPICS

criminal procedure

appellate procedure

evidence

reasonable doubt

preservation of error

PRACTICE AREAS

criminal law

criminal appellate procedure

criminal evidence

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to prove Turner guilty of aggravated assault upon a law enforcement officer beyond a reasonable doubt.
2. Whether inconsistencies and contradictions in the testimony, including the absence of gun testing and uncertainty about the second trigger pull, required reversal.
3. Whether the trial court erred by admitting or permitting reference to evidence of Turner's prior convictions.

HOLDINGS

1. The evidence was sufficient to support Turner's conviction for aggravated assault upon a law enforcement officer because testimony that he pointed a handgun at Officer Dean and pulled the trigger permitted a reasonable and fair-minded juror to find the elements of the offense beyond a reasonable doubt.
2. Conflicts and inconsistencies in the testimony did not warrant reversal because credibility determinations and resolution of conflicting evidence are within the province of the jury.
3. The challenge to the State's reference to Turner's prior convictions was procedurally barred because Turner did not object at trial. In any event, the reference was not error because Turner himself introduced the convictions to support his credibility, and the State could ask the jury to consider the same facts in evaluating credibility.

KEY QUOTATIONS

“When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited.” (818 So. 2d at 1184-85)

“It is well settled that in such a case of conflicting testimony, each distinct view is absorbed into the minds of the jury as the finders of fact, and it is within the province of the jury to determine the credibility among several witnesses.” (818 So. 2d at 1185)

“It is clear that the jury is the only arbiter of the credibility of witnesses.” (818 So. 2d at 1185)

FACTUAL BACKGROUND

While on patrol, Officer Jimmy Dean encountered Turner in a pickup truck parked at a vacant lot. Turner ran after being asked to speak with Dean, and during the ensuing pursuit and struggle Dean testified that Turner pointed a pistol at his forehead and pulled the trigger twice, with the gun clicking but not firing. Turner testified that he threw the gun away and denied pointing it at Dean or pulling the trigger. Turner testified at trial about three prior convictions, and the State referred to that background during closing argument in addressing credibility.

PROCEDURAL HISTORY

A Scott County Circuit Court jury found Turner guilty of aggravated assault upon a law enforcement officer. The trial court sentenced him to thirty years without parole as a habitual offender and imposed a \$5,000 fine. On appeal, appointed counsel initially filed an inadequate brief; the Supreme Court later overruled Killingsworth, adopted new procedures, reopened briefing, considered counsel's supplemental brief and Turner's pro se supplemental brief, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Killingsworth v. State, 490 So. 2d 849 (Miss. 1986)
- Turner v. State, 818 So. 2d 1186, 1189 (Miss. 2001)
- Hammond v. State, 465 So. 2d 1031, 1035 (Miss. 1985)
- Harveston v. State, 493 So. 2d 365, 370 (Miss. 1986)
- Spikes v. State, 302 So. 2d 250, 251 (Miss. 1974)
- Smith v. State, 802 So. 2d 82, 85 (Miss. 2001)
- Gibson v. State, 660 So. 2d 1268 (Miss. 1995)
- Hughes v. State, 724 So. 2d 893, 896 (Miss. 1998)
- Jackson v. State, 614 So. 2d 965, 972 (Miss. 1993)
- Collier v. State, 711 So. 2d 458, 462 (Miss. 1998)
- Groseclose v. State, 440 So. 2d 297, 300 (Miss. 1983)
- Gandy v. State, 373 So. 2d 1042, 1045 (Miss. 1979)
- Lacy v. State, 629 So. 2d 591, 593 (Miss. 1993)
- Alexander v. State, 520 So. 2d 127, 131 (Miss. 1988)