

SUPREME COURT OF MISSISSIPPI

Anthony Tyrone Thomas v. State of Mississippi

126 So. 3d 877 (Miss. 2013) · No. 2011-CT-00840-SCT · Decided May 3, 2011

SUMMARY

The Mississippi Supreme Court held that the indictment charging Anthony Tyrone Thomas with being a felon in possession of a weapon was constitutionally insufficient because it alleged possession of only “a knife” rather than identifying one of the specific prohibited knives listed in Mississippi Code Section 97-37-5. The court reversed the conviction on Count II and dismissed that indictment, while affirming Thomas’s aggravated-assault conviction and sentence on Count I.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Kitchens, Justice; Waller, C.J.; Dickinson, P.J.; Randolph, P.J.; Lamar, J.; Chandler, J.; Pierce, J.; King, J.; Coleman, J.
JURISDICTION	Mississippi
DECIDED	May 3, 2011
DOCKET	2011-CT-00840-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	On writ of certiorari to review the Mississippi Court of Appeals' affirmance of Thomas's convictions for aggravated assault and being a felon in possession of a weapon.
STANDARD OF REVIEW	De novo review of the legal sufficiency and constitutional validity of the indictment; plain-error review was available despite procedural bars.
PRECEDENTIAL VALUE	Published, precedential Mississippi Supreme Court opinion
PARTIES	Anthony Tyrone Thomas v. State of Mississippi

TOPICS

- criminal procedure
- sixth amendment
- appellate procedure
- statutory interpretation
- preservation of error

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether an indictment charging a convicted felon with possessing 'a knife,' without identifying one of the specific knives prohibited by Mississippi Code Section 97-37-5, sufficiently charged a crime.
2. Whether the defective indictment required reversal of the Count II conviction and dismissal of the Count II indictment.
3. Whether Thomas was entitled to a new trial on the aggravated-assault count under retroactive misjoinder after reversal of Count II.

HOLDINGS

1. An indictment charging a convicted felon with possessing only 'a knife' fails to allege the essential element identifying the specific type of knife prohibited by Mississippi Code Section 97-37-5 and therefore does not charge a cognizable crime.
2. The defective Count II indictment is void, requiring reversal of the conviction for being a felon in possession of a weapon and dismissal of that indictment.
3. The aggravated-assault conviction and sentence on Count I are affirmed; the court did not grant a new trial on Count I because its certiorari review was limited to Count II.

KEY QUOTATIONS

“An indictment which fails to allege all essential elements of a crime runs afoul of our constitutions and is void.” (¶7)

“The type of weapon a felon is alleged to have possessed is unquestionably an essential and material element of the crime of being a felon in possession of a prohibited weapon.” (¶8)

“The failure to charge Thomas with a crime cognizable under Mississippi law renders that count of the indictment void, requiring reversal of the conviction in Count II and dismissal of the indictment.” (¶9)

FACTUAL BACKGROUND

Thomas was accused of stabbing his girlfriend with a knife and was charged with aggravated assault and being a felon in possession of a prohibited weapon. The indictment alleged that, as a convicted felon, he knowingly possessed 'a knife,' but did not identify whether the knife was a bowie knife, dirk knife, butcher knife, or switchblade knife. A jury convicted Thomas on both counts, and he received two consecutive life-without-parole sentences as an habitual offender.

PROCEDURAL HISTORY

Thomas was convicted in the Hinds County Circuit Court of aggravated assault and being a felon in possession of a weapon and received consecutive life-without-parole sentences as an habitual offender. The Mississippi Court of Appeals initially reversed the convictions in 2009 based on erroneous admission of evidence concerning Thomas's prior felony conviction. After a second trial, Thomas was again convicted, and the Court of Appeals affirmed. The Mississippi Supreme Court granted certiorari but limited its review to Count II.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Count II conviction is reversed and the Count II indictment is dismissed. Count I, including the aggravated-assault conviction and life-without-parole sentence, is affirmed. No further remand instructions are stated.

CASES CITED

- Thomas v. State, 19 So. 3d 130, 135 (Miss. Ct. App. 2009)
- Thomas v. State, 2012 WL 4497345 (Miss. Ct. App. Oct. 2, 2012)
- Williams v. State, 37 So. 3d 717, 721 (Miss. Ct. App. 2010)
- Burchfield v. State, 277 So. 2d 623, 625 (Miss. 1973)
- Spears v. State, 253 Miss. 108, 175 So. 2d 158, 161-62 (1965)
- May v. State, 209 Miss. 579, 47 So. 2d 887 (1950)
- Kelly v. State, 204 Miss. 79, 36 So. 2d 925 (1948)
- Rogers v. State, 198 Miss. 495, 22 So. 2d 550 (1945)
- Crosby v. State, 191 Miss. 173, 2 So. 2d 813 (1941)
- Peterson v. State, 671 So. 2d 647, 653 (Miss. 1996)
- Love v. State, 211 Miss. 606, 52 So. 2d 470, 472 (1951)