

SUPREME COURT OF MISSISSIPPI

Mixon v. State

921 So. 2d 275 (Miss. 2005) · No. No. 2004-KA-01576-SCT · Decided December 8, 2005

SUMMARY

The Supreme Court of Mississippi affirmed Darryl Mixon's conviction for motor vehicle theft and his life sentence as a habitual offender. The court held that testimony concerning the victim's identification was admissible under the hearsay rules, that the indictment amendment was permissible because it concerned form rather than substance, and that the prosecutor's closing argument did not warrant a new trial.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Easley, J.; Carlson, J.; Dickinson, J.; Randolph, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	December 8, 2005
DOCKET	No. 2004-KA-01576-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mixon appealed his jury conviction for motor vehicle theft and his life sentence as a habitual offender, raising claims concerning hearsay evidence, amendment of the indictment, and prosecutorial closing argument.
STANDARD OF REVIEW	The Court reviews a criminal conviction in the light most favorable to the conviction and will not order a new trial unless the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice. Admission of evidence is reviewed for abuse of discretion, with reversal appropriate only when the abuse results in prejudice to the accused. The trial court's decision concerning the prejudicial effect of prosecutorial argument and whether to grant a mistrial is also reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Darryl Mixon v. State of Mississippi

TOPICS

hearsay

criminal procedure

evidence

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standard of review

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether testimony that one officer told a detective that Smith had identified Mixon constituted inadmissible hearsay or hearsay within hearsay.
2. Whether the State's in-trial amendment of the indictment to remove the word "feloniously" was an impermissible amendment of substance or was permissible as a formal amendment.
3. Whether the prosecutor's closing argument was sufficiently inflammatory or prejudicial to require a mistrial or new trial.

HOLDINGS

1. Testimony that Officer Catchings told Detective Wansley that Smith identified Mixon was not inadmissible hearsay because both Smith and Catchings testified and were available for cross-examination, and each part of the statements satisfied the applicable hearsay rule.
2. Removing the word "feloniously" from the motor-vehicle-theft indictment was a permissible amendment of form, not substance, because the indictment identified the charged offense and statutory provision and the amendment did not change the crime or prejudice or surprise Mixon.
3. The prosecutor's challenged closing argument did not require a mistrial or new trial because the trial court sustained the objection and instructed the jury to disregard the statement, thereby avoiding prejudice.

KEY QUOTATIONS

"Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules." (921 So. 2d at 278)

"The purpose of an indictment is to inform the accused of the charges against him." (921 So. 2d at 280)

"CONVICTION OF MOTOR VEHICLE THEFT AND SENTENCE OF LIFE IMPRISONMENT, AS AN HABITUAL OFFENDER, IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, AFFIRMED." (921 So. 2d at 282)

FACTUAL BACKGROUND

A man entered a service station, took Theodis Smith's truck without permission, and drove away while another vehicle followed. Smith followed the truck, observed the driver, and later identified Mixon to police shortly after two suspects were apprehended. At trial, officers testified about Smith's identification, and the State amended the indictment to remove the word "feloniously," which had been included through a scrivener's error. During closing argument, the prosecutor referred to Mixon's prior false-pretenses conviction and stated that Mixon did

not want to go to jail; the trial court sustained the objection to the latter statement and instructed the jury to disregard it.

PROCEDURAL HISTORY

Mixon was tried and convicted in the Circuit Court of the First Judicial District of Hinds County for motor vehicle theft under Mississippi Code section 97-17-42. Because he had two prior convictions for which he had served at least one year, including one violent offense, the trial court sentenced him to life imprisonment as a habitual offender under section 99-19-83. The Mississippi Supreme Court affirmed the conviction and sentence.

DISPOSITION

affirmed

CASES CITED

- Pearson v. State, 428 So. 2d 1361, 1364 (Miss. 1983)
- Groseclose v. State, 440 So. 2d 297, 300 (Miss. 1983)
- King v. State, 798 So. 2d 1258, 1261 (Miss. 2001)
- Parker v. State, 606 So. 2d 1132, 1137-38 (Miss. 1992)
- Sewell v. State, 721 So. 2d 129, 138 (Miss. 1998)
- Murphy v. State, 453 So. 2d 1290, 1294 (Miss. 1984)
- Kolberg v. State, 829 So. 2d 29, 77 (Miss. 2002)
- Ratcliff v. State, 308 So. 2d 225, 227 (Miss. 1975)
- Stubbs v. State, 878 So. 2d 130, 134 (Miss. Ct. App. 2004)
- King v. State, 580 So. 2d 1182, 1185 (Miss. 1991)
- Williams v. State, 445 So. 2d 798, 804 (Miss. 1984)
- Richmond v. State, 751 So. 2d 1038, 1045 (Miss. 1999)
- Reining v. State, 606 So. 2d 1098, 1103 (Miss. 1992)
- Shive v. State, 507 So. 2d 898, 900 (Miss. 1987)
- Copeland v. State, 423 So. 2d 1333, 1336 (Miss. 1982)
- Love v. State, 211 Miss. 606, 611, 52 So. 2d 470, 472 (1951)
- Brewer v. State, 351 So. 2d 535, 536 (Miss. 1977)
- Ishee v. State, 799 So. 2d 70, 76 (Miss. 2001)
- Dunaway v. State, 551 So. 2d 162, 163 (Miss. 1989)
- Sullivan v. State, 749 So. 2d 983, 991 (Miss. 1999)
- Hoops v. State, 681 So. 2d 521, 528 (Miss. 1996)
- Johnson v. State, 596 So. 2d 865, 869 (Miss. 1992)
- Ramseur v. State, 368 So. 2d 842, 845 (Miss. 1979)

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