

SUPREME COURT OF MISSISSIPPI

State of Mississippi v. Tommy Dean Shaw

880 So. 2d 296 (Miss. 2004) · No. No. 2001-KA-01854-SCT · Decided November 8, 2001

SUMMARY

The Mississippi Supreme Court considered whether a trial court, after directing a verdict of acquittal on a murder charge, could submit the unindicted offense of manslaughter to the jury. The court held that manslaughter is a lesser-included offense of murder and that the trial court erred in relying on *Harris v. State* to prevent the jury from considering manslaughter. The appeal presented a legal question under Mississippi law and did not subject the defendant to further prosecution.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Easley, Justice; Smith, Chief Justice; Dickinson, Justice; Randolph, Justice; Waller, Presiding Justice; Carlson, Justice; Cobb, Presiding Justice; Diaz, Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	November 8, 2001
DOCKET	No. 2001-KA-01854-SCT
DISPOSITION	other
PROCEDURAL POSTURE	The State appealed a directed verdict acquitting Shaw of indicted murder charges and refusing to submit the unindicted offense of manslaughter to the jury. The appeal presented only a question of law under Mississippi Code section 99-35-103(b), because the appeal could not subject Shaw to further prosecution or reverse his acquittal. On rehearing, the court granted rehearing, withdrew its original opinions, and substituted the present opinions.
STANDARD OF REVIEW	De novo review applies because the issue presented is a question of law.
PRECEDENTIAL VALUE	Published en banc opinion; binding Mississippi Supreme Court precedent.
PARTIES	State of Mississippi v. Tommy Dean Shaw

TOPICS

criminal procedure

appellate procedure

statutory interpretation

appellate jurisdiction

preservation of error

PRACTICE AREAS

criminal procedure

appellate procedure

homicide

QUESTIONS PRESENTED

1. Whether manslaughter is a lesser-included offense of murder under Mississippi law.
2. Whether, after directing a verdict of acquittal on an indicted murder charge for insufficient evidence, a trial court may submit the lesser-included offense of manslaughter to the jury through a limited directed verdict.
3. Whether *Harris v. State* barred submission of manslaughter to the jury in this case.

HOLDINGS

1. Manslaughter is a lesser-included offense of murder under Mississippi law, and an indictment for murder provides notice of the lesser-included offense.
2. The trial court erred by refusing to allow the State to submit to the jury whether Shaw was guilty of manslaughter as a lesser-included offense of murder.
3. *Harris* was inapplicable because it involved a lesser offense with different essential elements, whereas manslaughter is a lesser-included offense of murder.

KEY QUOTATIONS

“Harris is inapplicable to the case sub judice because manslaughter has been consistently held by this Court to be a lesser-included offense of murder.” (¶ 25)

“Since manslaughter is a lesser-included offense of murder, the jury here should have been allowed to decide whether Shaw is guilty of that lesser-included offense.” (¶ 30)

“The trial court erred in not allowing the State to submit to the jury whether Shaw was guilty of manslaughter as the lesser-included offense of murder.” (¶ 31)

FACTUAL BACKGROUND

A Stone County grand jury indicted Shaw for murder under Mississippi Code section 97-3-19(1)(a). After a retrial, the circuit court determined that the State had failed to make a prima facie case of murder and directed a verdict of acquittal on that charge. The court refused to permit the jury to consider manslaughter, reasoning under *Harris* that manslaughter was an unindicted offense that could not be submitted after an unqualified directed verdict.

PROCEDURAL HISTORY

Shaw was indicted for deliberate-design murder in Stone County. After a mistrial, he was retried in November 2001. Following a three-day trial, the circuit court directed a verdict of acquittal on murder and, relying on

Harris v. State, refused to submit manslaughter to the jury. The State appealed solely to obtain resolution of the legal question, and the Supreme Court answered the question without disturbing the acquittal.

DISPOSITION

other

CASES CITED

- Harris v. State, 723 So. 2d 546 (Miss. 1997)
- Ostrander v. State, 803 So. 2d 1172, 1174, 1176-77 (Miss. 2002)
- Kelly v. State, 463 So. 2d 1070, 1073 (Miss. 1985)
- Grayer v. State, 519 So. 2d 438, 440 n.3 (Miss. 1988)
- Porter v. State, 616 So. 2d 899, 909-10 (Miss. 1993)
- Fulcher v. State, 805 So. 2d 556, 560-61 (Miss. Ct. App. 2001)
- Odom v. State, 767 So. 2d 242, 245-46 (Miss. Ct. App. 2000)
- Hailey v. State, 537 So. 2d 411, 412, 414-16 (Miss. 1988)
- Moore v. State, 799 So. 2d 89, 90-91 (Miss. 2001)
- Hester v. State, 841 So. 2d 158, 162 (Miss. Ct. App. 2002)
- Payton v. State, 642 So. 2d 1328, 1334 (Miss. 1994)
- State ex rel. Robinson v. Blackburn, 367 So. 2d 360, 362-63 (La. 1979)
- People v. McElroy, 208 Cal. App. 3d 1415, 256 Cal. Rptr. 853 (Cal. Ct. App. 1989)
- State v. Morris, 331 N.W.2d 48, 55-56 (N.D. 1983)
- State v. Foster, 433 N.W.2d 168, 168-69 (Neb. 1988)