

SUPREME COURT OF MISSISSIPPI

Tillis v. State

43 So. 3d 1127 (Miss. 2010) · No. 2009-KA-00304-SCT · Decided September 16, 2010

SUMMARY

The Supreme Court of Mississippi affirmed Zenas Tillis’s conviction for simple assault of an employee of a private correctional facility and his five-year consecutive sentence. The majority held that a nurse employed by a contractor but working exclusively at the facility could qualify as a dual employee under Mississippi Code section 47-4-1(4). A partial dissent would have vacated the enhanced sentence because the jury, rather than the court, should have determined the victim’s employment status under Apprendi.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Waller, C.J.; Carlson, P.J.; Randolph, J.; Lamar, J.; Chandler, J.; Pierce, J.
JURISDICTION	Mississippi
DECIDED	September 16, 2010
DOCKET	2009-KA-00304-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tillis appealed his conviction and enhanced sentence for simple assault of an employee of a private correctional facility after the Circuit Court of Leake County denied his motions for directed verdict, peremptory instruction, and new trial.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. A directed-verdict motion challenges the sufficiency of the evidence and is reviewed de novo. A motion for new trial challenges the weight of the evidence and is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Mississippi.
PARTIES	Zenas Tillis v. State of Mississippi

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QUESTIONS PRESENTED

1. Whether Mississippi Code section 47-4-1(4) includes a contract worker who is also a dual employee of a private correctional facility.
2. Whether the evidence satisfied the statutory and indictment requirement that Hogue was an employee of a private correctional facility.
3. Whether the circuit court properly denied Tillis's motions for directed verdict, peremptory instruction, and new trial.

HOLDINGS

1. The term employee in Mississippi Code section 47-4-1(4) includes a dual employee who works for both a private correctional facility and a contracting company, even if the facility does not pay the employee's wages.
2. The evidence was sufficient for reasonable jurors to find that Hogue was an employee of Walnut Grove, and the circuit court properly denied Tillis's motions for directed verdict, peremptory instruction, and new trial.

KEY QUOTATIONS

“Such dual employment may exist even if only one employer pays the employee.” (43 So. 3d at 1132)

“Rather, given Hogue’s exclusive service to Walnut Grove, this Court concludes that she was a dual employee of both Walnut Grove and Health Assurance.” (43 So. 3d at 1132-33)

“In fact, an interpretation which protects individuals performing constitutionally mandated services in the prisons of this state “best suits the legislature’s true intent or meaning” in enacting the enhanced sentencing provisions of Mississippi Code Section 47-4-1(4).” (43 So. 3d at 1133)

FACTUAL BACKGROUND

While delivering medication to inmates at Walnut Grove Youth Correctional Facility, nurse Kathy Hogue reached into Tillis's cell to provide him an inhaler. Tillis grabbed and twisted her hand and ring finger, causing a spiral fracture that required splinting and casting. Hogue testified that she worked for Health Assurance, a contract medical company, rather than being paid directly by Walnut Grove, although she worked exclusively at the facility providing medical care to inmates.

PROCEDURAL HISTORY

Tillis was indicted under Mississippi Code sections 47-4-1 and 97-3-7 and convicted by a jury of simple assault of a private-correctional-facility employee. The circuit court imposed a five-year sentence consecutive to his

existing sentence. After the court denied his motion for new trial, Tillis timely appealed; the Supreme Court of Mississippi affirmed the conviction and sentence.

DISPOSITION

affirmed

CASES CITED

- Gilmer v. State, 955 So. 2d 829, 833 (Miss. 2007)
- Estelle v. Gamble, 429 U.S. 97, 103 (1976)
- Ray v. Babcock & Wilcox Co., Inc., 388 So. 2d 166, 167 (Miss. 1980)
- Northern Elec. Co. v. Phillips, 660 So. 2d 1278, 1282 (Miss. 1995)
- Dependents of Roberts v. Holiday Parks, Inc., 260 So. 2d 476, 478 (Miss. 1972)
- Biggart v. Texas Eastern Transmission Corp., 235 So. 2d 443, 444-45 (Miss. 1970)
- Lewis v. State, 765 So. 2d 493, 499 (Miss. 2000)
- Dilworth v. State, 909 So. 2d 731, 737 (Miss. 2005)
- Jureka Brown v. State, 995 So. 2d 698, 703-05 (Miss. 2008)
- Apprendi v. New Jersey, 530 U.S. 466, 490 (2000)
- Ford v. State, 975 So. 2d 859, 863 (Miss. 2008)
- Austin v. State, 784 So. 2d 186, 192 (Miss. 2001)
- Glover v. Jackson State Univ., 755 So. 2d 395, 398 n. 1 (Miss. 2000)
- Runnels v. Burdine, 234 Miss. 272, 276-77, 106 So. 2d 49, 51 (1958)