

SUPREME COURT OF MISSISSIPPI

Tracy Dixon and Jerry Ford a/k/a Jerry Lee Ford v. State of Mississippi

No. 2004-CT-01582-SCT · No. No. 2004-CT-01582-SCT · Decided July 21, 2004

SUMMARY

The Supreme Court of Mississippi reviewed convictions of Tracy Dixon and Jerry Lee Ford for possession of cocaine with intent to distribute. The court held that the evidence supported each defendant’s conviction for the cocaine each physically possessed, but not constructive possession of the cocaine possessed by the other defendant. It also held that the challenge to police expert testimony was procedurally barred because no contemporaneous objection was made. The convictions and sentences were affirmed.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Smith, Chief Justice, for the Court; Smith, Chief Justice; Diaz, Justice; Easley, Justice; Carlson, Justice; Graves, Justice; Dickinson, Justice; Randolph, Justice; Cobb, Presiding Justice; Waller, Presiding Justice, not participating
JURISDICTION	Mississippi
DECIDED	July 21, 2004
DOCKET	No. 2004-CT-01582-SCT
DISPOSITION	reversed
PROCEDURAL POSTURE	On writ of certiorari from the Mississippi Court of Appeals, defendants challenged the sufficiency of the evidence supporting their convictions for possession of twenty grams of cocaine with intent to distribute and the admission of police-officer testimony concerning the value and packaging of the cocaine.

STANDARD OF REVIEW	For a motion for judgment notwithstanding the verdict, the legal sufficiency of the evidence is viewed in the light most favorable to the State; credible evidence supporting guilt is accepted as true and favorable inferences are drawn in the State's favor. The court considered unpreserved evidentiary error only under the plain-error standard applicable in unusual circumstances involving a manifest miscarriage of justice or violation of a substantive right.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court en banc opinion; binding precedent within Mississippi subject to later treatment.
PARTIES	Tracy Dixon, Jerry Ford a/k/a Jerry Lee Ford v. State of Mississippi

TOPICS

criminal procedure evidence appellate procedure preservation of error standard of review

PRACTICE AREAS

criminal law criminal procedure evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove beyond a reasonable doubt that each defendant constructively possessed the cocaine physically possessed by the other, so as to support convictions for possession of the combined twenty grams.
2. Whether the trial court improperly admitted police officers' testimony concerning the value and packaging of the cocaine without qualifying the officers as expert witnesses, and whether the issue could be reviewed as plain error despite the absence of a contemporaneous objection.

HOLDINGS

1. The evidence was insufficient to prove beyond a reasonable doubt that Ford constructively possessed the 6.5 grams physically possessed by Dixon or that Dixon constructively possessed the 13.5 grams physically possessed by Ford. Mere association and presence in the same vehicle established physical proximity but did not establish dominion or control over the other defendant's cocaine.
2. The evidence was sufficient to sustain Ford's conviction for possession with intent to distribute 13.5 grams and Dixon's conviction for possession with intent to distribute 6.5 grams. The amount and packaging of the cocaine, together with the officers' testimony, sufficiently established intent to distribute.
3. The challenge to the admission of the police officers' testimony was procedurally barred because defendants did not make a contemporaneous objection at trial. No circumstances warranted plain-error review.

KEY QUOTATIONS

“there must be evidence, in addition to physical proximity, showing the defendant consciously exercised control over the contraband, and absent this evidence, a finding of constructive possession cannot be sustained.” (at 6)

“The evidence did not show beyond a reasonable doubt that either defendant was guilty of constructive possession of the cocaine found on the other person, the total of which amounted to twenty grams.” (at 13)

FACTUAL BACKGROUND

Police received a tip that Ford and Dixon were leaving Ford's residence in a blue Mazda carrying illegal drugs. After officers stopped the vehicle, both defendants fled in separate directions and each discarded cocaine that officers recovered: Ford discarded 13.5 grams and Dixon discarded 6.5 grams. The cocaine was packaged in multiple rocks, and police officers testified that the amount and packaging indicated an intent to distribute; cash recovered near Ford also included a bill whose serial number matched money used in an earlier controlled buy from Ford.

PROCEDURAL HISTORY

The Sunflower County Circuit Court convicted both defendants of possession of twenty grams of cocaine with intent to distribute and sentenced each to thirty years' imprisonment and a \$500,000 fine. The Mississippi Court of Appeals unanimously affirmed the convictions on June 6, 2006, and denied rehearing on November 14, 2006. The Mississippi Supreme Court granted review, reversed the convictions to the extent they attributed the combined twenty grams to each defendant, affirmed each defendant's conviction based on the separate amount actually possessed, affirmed both sentences and fines, and held the evidentiary issue procedurally barred.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No specific remand instructions were given. The court reversed the convictions insofar as they treated each defendant as possessing the combined twenty grams, while affirming each defendant's conviction and sentence for possession with intent to distribute the separate amount actually possessed.

CASES CITED

- Dixon v. State, 2006 Miss. App. LEXIS 434 (Miss. Ct. App. 2006)
- Johnson v. State, 904 So. 2d 162, 166 (Miss. 2005)
- McClain v. State, 625 So. 2d 774, 778 (Miss. 1993)
- Carr v. State, 208 So. 2d 886, 889 (Miss. 1968)
- Berry v. State, 652 So. 2d 745, 748, 750-51 (Miss. 1995)
- Wolf v. State, 260 So. 2d 425, 432 (Miss. 1972)
- Curry v. State, 249 So. 2d 414, 416 (Miss. 1971)
- Vickery v. State, 535 So. 2d 1371, 1379 (Miss. 1988)

- *Hamburg v. State*, 248 So. 2d 430, 432-33 (Miss. 1971)
- *Roberson v. State*, 595 So. 2d 1310, 1319 (Miss. 1992)
- *Blissett v. State*, 754 So. 2d 1242, 1244 (Miss. 2000)
- *Kerns v. State*, 923 So. 2d 196
- *Fox v. State*, 756 So. 2d 753, 758 (Miss. 2000)
- *Jones v. State*, 693 So. 2d 375, 377 (Miss. 1997)
- *Wells v. State*, 903 So. 2d 739, 742 (Miss. 2005)
- *Ballenger v. State*, 667 So. 2d 1242, 1272 (Miss. 1995)
- *Davis v. State*, 660 So. 2d 1228, 1245 (Miss. 1995)
- *Chase v. State*, 645 So. 2d 829, 854 (Miss. 1994)
- *Hansen v. State*, 592 So. 2d 114, 139-40 (Miss. 1991)
- *City of Starkville v. 4-County Elec. Power Ass'n*, 909 So. 2d 1094, 1111-12 (Miss. 2005)
- *Johnson v. Fargo*, 604 So. 2d 306, 311 (Miss. 1992)
- *Grubb v. State*, 584 So. 2d 786, 789 (Miss. 1991)
- *McGee v. State*, 2007 Miss. LEXIS 19, at *6 (Miss. 2007)