

SUPREME COURT OF MISSISSIPPI

Kimble Peter Smith v. State of Mississippi

925 So. 2d 825 (Miss. 2006) · No. No. 2003-KA-00550-SCT · Decided March 30, 2006

SUMMARY

The Supreme Court of Mississippi reviewed Kimble Peter Smith's convictions for sexual battery and touching and handling a child for lustful purposes. The court rejected challenges to the sufficiency and weight of the evidence, the denial of a mistrial after an unedited videotape question was briefly heard, and the admission or qualification of forensic-interviewing expert testimony. The court emphasized that several evidentiary arguments were unpreserved because Smith did not object at trial.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Smith, Chief Justice; Waller, Presiding Justice; Cobb, Presiding Justice; Easley, Justice; Carlson, Justice; Dickinson, Justice; Graves, Justice; Diaz, Justice (not participating)
JURISDICTION	Mississippi
DECIDED	March 30, 2006
DOCKET	No. 2003-KA-00550-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Smith appealed his Pike County Circuit Court convictions for sexual battery and touching and handling a child for lustful purposes, challenging the sufficiency and weight of the evidence, the denial of a mistrial after an improperly edited videotape was played to the jury, and the admission of expert testimony from forensic interviewers.
STANDARD OF REVIEW	A judgment notwithstanding the verdict is reviewed for abuse of discretion, with the sufficiency question being whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find every essential element beyond a reasonable doubt. A denial of a motion for new trial based on the weight of the evidence is reviewed for abuse of discretion and will be disturbed only when the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice. The denial of a mistrial and the qualification of expert

	witnesses are also reviewed for abuse of discretion, with the expert-qualification ruling disturbed only upon clear abuse of discretion.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	Kimble Peter Smith v. State of Mississippi

TOPICS

criminal procedure evidence expert testimony appellate procedure standard of review

PRACTICE AREAS

criminal law criminal procedure evidence appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to support Smith's convictions for sexual battery and touching and handling a child for lustful purposes.
2. Whether the jury's verdict was against the overwhelming weight of the evidence.
3. Whether the trial court abused its discretion by denying a mistrial after the jury heard an improperly unedited question on a videotape concerning Smith's possible similar conduct with other children.
4. Whether the trial court erred in admitting testimony from Keith Stovall and Bente' Hess as experts in forensic interviewing and allowing testimony concerning the consistency and credibility of the children's interviews.

HOLDINGS

1. The evidence was sufficient to support both convictions because, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that Smith committed the charged acts and that every essential element of each offense was established.
2. The circuit court did not abuse its discretion in denying Smith's motion for a new trial because the verdict was not so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice.
3. The trial court properly denied the motion for mistrial because the jury heard only the objectionable question, not the answer, and the court admonished the jury to disregard the question and draw no inference from it.
4. The challenge to Stovall's and Hess's qualifications and opinions was procedurally barred because Smith did not object at trial and stipulated that Hess was an expert. In any event, testimony concerning the credibility or reliability of the interviews, as distinguished from direct opinions about the children's veracity, was properly admitted under the circumstances.

KEY QUOTATIONS

“Therefore, a rational trier of fact could find the testimony of Joan and Karen, which was corroborated by their prior statements to the elementary school principal, an investigating officer, and experts in the field of child sexual abuse, all of whom interviewed the girls, was sufficient to establish beyond a reasonable doubt that the accused committed the acts charged and that the essential elements of each count were established beyond a reasonable doubt.” (832)

“Evidence that the interviews were credible, i.e. capable of being believed, was properly admitted. On the other hand, comments about a witness' veracity, i.e. truthfulness, will generally be inadmissible, because of its "dubious competency."” (839)

FACTUAL BACKGROUND

Smith took fifteen-year-old Joan and eleven-year-old Karen with him in a vehicle after representing that he was taking them to Wal-Mart. He separated Joan from the others and sexually touched and penetrated her on a secluded road, and later touched Karen and proposed a sexualized game. The girls subsequently reported the events to a school principal and police, and their accounts were described as consistent by investigating witnesses and forensic interviewers.

PROCEDURAL HISTORY

Smith was indicted in Pike County on two sexual-offense counts, convicted by a jury on February 26, 2003, and sentenced to consecutive terms of thirty years and twenty years. The circuit court denied his motion for a new trial or judgment notwithstanding the verdict. The Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Brown v. State, 907 So. 2d 336, 339 (Miss. 2005)
- Howell v. State, 860 So. 2d 704, 764 (Miss. 2003)
- Carr v. State, 208 So. 2d 886, 889 (Miss. 1968)
- Jackson v. Virginia, 443 U.S. 307, 315 (1979)
- Edwards v. State, 469 So. 2d 68, 70 (Miss. 1985)
- Pharr v. State, 465 So. 2d 294, 302 (Miss. 1984)
- Bush v. State, 895 So. 2d 836, 844 (Miss. 2005)
- Dilworth v. State, 909 So. 2d 731, 737 (Miss. 2005)
- Lambert v. State, 462 So. 2d 308, 322 (Miss. 1984)
- Mitchell v. State, 539 So. 2d 1366, 1372 (Miss. 1989)
- Washington v. State, 800 So. 2d 1140, 1143 (Miss. 2001)
- Lockridge v. State, 768 So. 2d 331, 339 (Miss. Ct. App. 2000)
- Hoops v. State, 681 So. 2d 521, 528 (Miss. 1996)

- Wright v. State, 540 So. 2d 1, 4 (Miss. 1989)
- Marks v. State, 532 So. 2d 976, 982 (Miss. 1988)
- Carr v. State, 655 So. 2d 824, 836 (Miss. 1995)
- Logan v. State, 773 So. 2d 338, 346-47 (Miss. 2000)
- Sheffield v. Goodwin, 740 So. 2d 854, 856 (Miss. 1999)
- Haddox v. State, 636 So. 2d 1229, 1240 (Miss. 1994)
- Jackson v. State, 743 So. 2d 1008, 1016 (Miss. Ct. App. 1999)
- Griffith v. State, 584 So. 2d 383, 386-87 (Miss. 1991)
- State v. Lindsey, 149 Ariz. 472, 720 P.2d 73, 74-76 (1986)
- State v. Myers, 382 N.W.2d 91, 97 (Iowa 1986)
- State v. Friedrich, 135 Wis. 2d 1, 16, 398 N.W.2d 763, 770 (1987)
- Jones v. State, 606 So. 2d 1051, 1057-59 (Miss. 1992)
- Idaho v. Wright, 497 U.S. 805, 822 (1990)
- Williams v. State, 539 So. 2d 1049, 1051 (Miss. 1989)
- Goodson v. State, 566 So. 2d 1142, 1153 (Miss. 1990)
- Hosford v. State, 560 So. 2d 163, 166-67 (Miss. 1990)
- House v. State, 445 So. 2d 815, 821-23 (Miss. 1984)