

SUPREME COURT OF MISSISSIPPI

Deionta Ivory v. State of Mississippi

Ivory · No. 2018-KA-00981-SCT · Decided September 19, 2019

SUMMARY

The Mississippi Supreme Court affirmed Deionta Ivory’s convictions and sentences for armed robbery and kidnapping. The court held that counsel’s oral motion for judgment notwithstanding the verdict could not be construed as a motion for a new trial, so the challenge to the overwhelming weight of the evidence was not preserved. The court nevertheless considered the ineffective-assistance claim, finding deficient performance but no prejudice because the convictions were supported by the overwhelming weight of the evidence.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Kitchens, Presiding Justice; Kitchens, P.J.; Randolph, C.J.; King, P.J.; Coleman, J.; Maxwell, J.; Beam, J.; Chamberlin, J.; Ishee, J.; Griffis, J.
JURISDICTION	Mississippi
DECIDED	September 19, 2019
DOCKET	2018-KA-00981-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ivory appealed his Monroe County Circuit Court convictions and consecutive sentences for armed robbery and kidnapping. He argued that the verdicts were contrary to the overwhelming weight of the evidence, that his ore tenus motion for judgment notwithstanding the verdict should be construed as a motion for a new trial, and alternatively that trial counsel was ineffective for failing to file a new-trial motion.
STANDARD OF REVIEW	The denial of a JNOV is reviewed de novo and concerns the legal sufficiency of the evidence. A motion for a new trial challenges the weight of the evidence and is reviewed under a lower standard. Ineffective-assistance-of-counsel claims are reviewed de novo under the two-prong Strickland test. The evidence is viewed in the light most favorable to the verdict, which is disturbed only when allowing it to stand would sanction an unconscionable injustice.

PRECEDENTIAL VALUE	published
PARTIES	Deionta Ivory a/k/a Deionta Jontel Ivory v. State of Mississippi

TOPICS

criminal procedure appellate procedure ineffective assistance preservation of error standard of review

PRACTICE AREAS

criminal law criminal procedure appellate practice constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether Ivory's ore tenus motion for JNOV could be construed as a motion for a new trial challenging the overwhelming weight of the evidence.
2. Whether the weight-of-the-evidence challenge was preserved for appellate review.
3. Whether trial counsel's failure to file a motion for a new trial constituted ineffective assistance of counsel.
4. Whether Ivory was prejudiced by counsel's failure to file a motion for a new trial because the verdicts were contrary to the overwhelming weight of the evidence.

HOLDINGS

1. An ore tenus motion for JNOV cannot be recharacterized as a motion for a new trial when counsel expressly moved for JNOV, the trial court ruled on that motion, and no proper written motion for a new trial was filed.
2. Ivory did not preserve his challenge that the verdicts were contrary to the overwhelming weight of the evidence because he failed to file a cognizable motion for a new trial.
3. Counsel's failure to file a post-trial motion for a new trial constituted deficient performance, but Ivory did not establish prejudice.
4. The verdicts were not contrary to the overwhelming weight of the evidence, and no reasonable probability existed that the trial court would have granted a motion for a new trial.

KEY QUOTATIONS

“Ivory’s motion for JNOV cannot be construed as a motion for a new trial.” (§ 41)

“We review evidence “in the light most favorable to the verdict and disturb the verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it stand would sanction an unconscionable injustice.”” (§ 47)

“Although his trial counsel was deficient for failing to file a motion for new trial, Ivory was not prejudiced by that omission because the verdicts were not contrary to the overwhelming weight of the evidence.” (§ 58)

FACTUAL BACKGROUND

Two teenagers reported that a man displaying a handgun entered their vehicle, demanded money, directed the driver toward a bank, and then ordered them to stop at a Chevron station. Shortly afterward, police found Ivory at a nearby Food Giant wearing clothing resembling the reported description; both victims later identified him in photographic lineups and at trial. Police found a replica handgun, a puffy black jacket, and a toboggan at Ivory's residence, although other evidence, including DNA testing and clothing comparisons, was inconclusive. Ivory denied involvement and presented evidence that he had a speech impediment and an alibi-related timeline.

PROCEDURAL HISTORY

A Monroe County grand jury indicted Ivory for attempted armed robbery and kidnapping. After the trial court denied a directed-verdict motion, the jury found him guilty of armed robbery and kidnapping. The court imposed consecutive sentences of forty years, with ten years suspended, for armed robbery and thirty years for kidnapping. During sentencing, defense counsel made an ore tenus JNOV motion, which was denied, but did not file a motion for a new trial. The Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Murray v. State, 802 So. 2d 107, 109 (¶ 6) (Miss. Ct. App. 2001)
- Howard v. State, 507 So. 2d 58, 63 (Miss. 1987)
- Harrison v. McMillan, 828 So. 2d 756, 763 (¶ 21) (Miss. 2002)
- Sheffield v. State, 749 So. 2d 123, 126-127 (Miss. 1999)
- Leonard v. State, 972 So. 2d 24, 30 (¶ 24) (Miss. Ct. App. 2008)
- Daniels v. State, 107 So. 3d 961, 963 (Miss. 2013)
- Johnson v. St. Dominics–Jackson Mem’l Hosp., 967 So. 2d 20, 22 (Miss. 2007)
- Cooper v. Lawson, 264 So. 2d 890, 891 (Miss. 1972)
- Clark v. State, 206 Miss. 701, 39 So. 2d 783 (1949)
- Tutor v. State, 271 So. 3d 552, 556 (¶ 11) (Miss. 2018)
- Alonso v. State, 838 So. 2d 309, 313 (Miss. Ct. App. 2002)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Taylor v. State, 167 So. 3d 1143, 1146 (¶ 5) (Miss. 2015)
- Read v. State, 430 So. 2d 832, 841 (Miss. 1983)
- Foster v. State, 687 So. 2d 1124, 1129 (Miss. 1996)
- Holly v. State, 716 So. 2d 979, 989 (¶ 37) (Miss. 1998)
- Carney v. State, 525 So. 2d 776, 780 (Miss. 1988)
- Holland v. State, 656 So. 2d 1192, 1197 (Miss. 1995)
- Gilliard v. State, 462 So. 2d 710, 714 (Miss. 1985)

- Hannah v. State, 943 So. 2d 20, 24 (¶ 6) (Miss. 2006)
- Little v. State, 233 So. 3d 288, 292 (¶ 1) (Miss. 2017)
- Woods v. State, 242 So. 3d 47, 51-62 (Miss. 2018)
- Pace v. State, 242 So. 3d 107, 117-119 (Miss. 2018)
- Giles v. State, 187 So. 3d 116, 120-121 (¶ 13) (Miss. 2016)
- Beasley v. State, 136 So. 3d 393, 403 (¶ 35) (Miss. 2014)
- Temple v. State, 498 So. 2d 379, 382 (Miss. 1986)
- Swanagan v. State, 229 So. 3d 698, 705 (¶ 28) (Miss. 2017)
- Ambrose v. State, 133 So. 3d 786, 793 (Miss. 2013)
- Shinn v. State, 179 So. 3d 1006 (Miss. 2015)
- White v. State, 223 So. 3d 859 (Miss. Ct. App. 2017)
- Davis v. State, 684 So. 2d 643, 660 (Miss. 1996)
- Harris v. State, 445 So. 2d 1369, 1370 (Miss. 1984)
- Glenn v. State, 996 So. 2d 148, 155 (¶ 29) (Miss. Ct. App. 2008)