

SUPREME COURT OF MISSISSIPPI

Gore v. State

37 So. 3d 1178 (Miss. 2010) · No. No. 2009-KA-01090-SCT · Decided July 1, 2010

SUMMARY

The Supreme Court of Mississippi reviewed John T. Gore’s conviction for sexual abuse of his twenty-one-month-old granddaughter. The court held that evidence of prior alleged sexual misconduct and nudity was admissible under Mississippi Rule of Evidence 404(b), that exclusion of a defense witness’s testimony under Rule 608(b) was harmless error, and that the warrantless seizure of a vibrator was consensual. The court also addressed the sufficiency of the evidence supporting the conviction.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Justice; Waller, C.J.; Carlson, P.J.; Graves, P.J.; Dickinson, J.; Lamar, J.; Chandler, J.; Pierce, J.; Randolph, J.; Kitchens, J.
JURISDICTION	Mississippi
DECIDED	July 1, 2010
DOCKET	No. 2009-KA-01090-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gore appealed his conviction and sentence for gratification of lust, challenging evidentiary rulings, the warrantless seizure of a vibrator from his home, and the sufficiency of the evidence.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion, subject to reversal only when the error prejudices the accused. Suppression findings are reviewed under the totality of the circumstances and will not be disturbed if supported by substantial credible evidence. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John T. Gore v. State of Mississippi

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by admitting evidence of Gore's prior alleged sexual misconduct and nudist practices under Mississippi Rules of Evidence 404(b) and 403.
2. Whether the circuit court erred by excluding Linda Stanley's testimony under Mississippi Rule of Evidence 608(b), and, if so, whether the error required reversal.
3. Whether the warrantless seizure of the vibrator from Gore's home violated the Fourth Amendment or Mississippi Constitution.
4. Whether sufficient evidence supported Gore's conviction under Mississippi Code section 97-5-23(1).

HOLDINGS

1. The circuit court did not abuse its discretion by admitting evidence of Gore's prior sexual abuse of his daughter and acts involving nudity by Gore and his children. Under *Derouen*, such evidence may be admitted under a Rule 404(b) exception, filtered through Rule 403, and accompanied by an appropriate limiting instruction.
2. The circuit court erred in concluding that Stanley's testimony was prohibited by Rule 608(b), because the testimony concerned specific acts of Gore rather than extrinsic proof offered solely to attack or support Katie's character for truthfulness. The error was harmless and did not require reversal.
3. The warrantless seizure was lawful because Gore voluntarily consented to the officers' retrieval of the vibrator after being advised of his Miranda rights, and he failed to prove impaired consent or diminished capacity.
4. The evidence was sufficient, and indeed overwhelming, to support Gore's conviction under Mississippi Code section 97-5-23(1).

KEY QUOTATIONS

"Our holding today reaffirms our holding in Derouen, which limits the use of such evidence by exception(s) to the rule." (37 So. 3d at 1187)

"The circuit court erred in concluding that Stanley's testimony was prohibited under Rule 608(b)." (37 So. 3d at 1188)

"Voluntary consent "is a question of fact to be determined by the total circumstances."" (37 So. 3d at 1189)

"This Court concludes that the jury was presented with not merely sufficient evidence of Gore's guilt on the enumerated elements (i.e., a rational juror could have found each element beyond a reasonable doubt), but overwhelming evidence of such." (37 So. 3d at 1190)

FACTUAL BACKGROUND

Gore babysat his twenty-one-month-old granddaughter, M.G., and was later found in bed with her while she was naked and without a diaper. M.G. exhibited physical signs of anal injury, made statements concerning her buttocks, and was determined by a physician to have been sexually abused. Gore gave investigators multiple inconsistent explanations, including that M.G. had found and used a vibrator. After being advised of his Miranda rights, Gore led officers to the vibrator in a box under his bed.

PROCEDURAL HISTORY

Gore was indicted in the Circuit Court of Rankin County, Mississippi, and convicted as charged. He received a fifteen-year sentence in the custody of the Mississippi Department of Corrections, with the final two years suspended and five years of post-release supervised probation. The circuit court denied his motion for judgment notwithstanding the verdict or, alternatively, a new trial, and Gore appealed. The Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Price v. State, 898 So. 2d 641, 653 (Miss. 2005)
- Walker v. State, 878 So. 2d 913, 915 (Miss. 2004)
- Derouen v. State, 994 So. 2d 748, 754-756 (Miss. 2008)
- Mitchell v. State, 539 So. 2d 1366, 1372 (Miss. 1989)
- Lambert v. State, 724 So. 2d 392, 394 (Miss. 1998)
- State v. Driggers, 554 So. 2d 720, 726-727 (La. Ct. App. 1989)
- State v. Jackson, 625 So. 2d 146, 151 (La. 1993)
- United States v. Hadley, 918 F.2d 848, 850-851 (9th Cir. 1990)
- State v. Plymate, 216 Neb. 722, 345 N.W.2d 327 (1984)
- Ex parte Register, 680 So. 2d 225, 228 (Ala. 1994)
- Cofer v. State, 440 So. 2d 1116, 1118-1119 (Ala. Crim. App. 1983), rev'd in part on other grounds, 440 So. 2d 1121 (Ala. 1983)
- Shapiro v. State, 696 So. 2d 1321, 1324 (Fla. Dist. Ct. App. 1997)
- State v. Wermerskirchen, 497 N.W.2d 235, 243 n. 3 (Minn. 1993)
- Jackson v. State, 645 So. 2d 921, 924 (Miss. 1994)
- Newsom v. State, 629 So. 2d 611, 612 (Miss. 1993)
- Moore v. State, 933 So. 2d 910, 914, 916 (Miss. 2006)
- Morris v. State, 777 So. 2d 16, 26 (Miss. 2000)
- Jones v. State, 607 So. 2d 23, 27, 29 (Miss. 1991)
- Norman v. State, 302 So. 2d 254, 257-258 (Miss. 1974)

- Terry v. Ohio, 392 U.S. 1, 27 (1968)
- Bush v. State, 895 So. 2d 836, 843 (Miss. 2005)
- Jackson v. Virginia, 443 U.S. 307, 315 (1979)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- State v. Foburg, 744 So. 2d 1175, 1176-1179 (Fla. Dist. Ct. App. 1999)
- Hoffman v. State, 259 Ga. App. 131, 576 S.E.2d 102, 104-106 (2003)
- Turner v. State, 245 Ga. App. 476, 538 S.E.2d 125 (2000)
- Elliott v. State, 600 P.2d 1044, 1047 (Wyo. 1979)

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