

ARKANSAS COURT OF APPEALS

McKinney v. State

538 S.W.3d 216 (Ark. Ct. App. 2018) · Decided January 10, 2018

SUMMARY

The Arkansas Court of Appeals held that McKinney's challenges to the sufficiency of the evidence and consecutive sentences were not preserved for appeal. It held that his suppression motions were timely and that he was entitled to a hearing on his motion to suppress his statement, while the circuit court was directed to rule on the merits of his motion to suppress the search. The court affirmed some convictions, reversed and remanded in part, and instructed the circuit court to determine whether a new trial was required.

CASE DETAILS

COURT	Arkansas Court of Appeals
WRITING FOR THE COURT	Larry D. Vaught; Gladwin; Murphy
JURISDICTION	Arkansas
DECIDED	January 10, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	McKinney appealed his jury convictions and consecutive sentences, challenging the sufficiency of the evidence, the consecutive sentencing order, and the denial of a hearing on his pretrial motions to suppress.
STANDARD OF REVIEW	The court reviewed preservation of sufficiency and sentencing arguments de novo as a matter of appellate procedure, reviewed the denial of a pretrial suppression hearing for abuse of discretion, and applied constitutional harmless-error review to the admission of the statement, requiring harmlessness beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Arkansas Court of Appeals opinion; precedential under applicable Arkansas law.
PARTIES	Kwasi McKinney v. State

TOPICS

- suppression of evidence
- criminal procedure
- preservation of error
- harmless error
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether McKinney preserved a sufficiency challenge based on the State's failure to prove constructive possession of the firearm and drugs.
2. Whether McKinney preserved a challenge to the circuit court's decision to impose consecutive sentences.
3. Whether McKinney's motions to suppress his statement and the search were timely under Arkansas Rule of Criminal Procedure 16.2.
4. Whether McKinney was entitled to a pretrial hearing on his motion to suppress his statement and his motion to suppress the search.
5. Whether the admission of McKinney's statement was harmless beyond a reasonable doubt as to each challenged conviction.

HOLDINGS

1. A directed-verdict motion that merely asserts the defendant did not possess the firearm does not preserve an appellate argument that the State failed to prove constructive possession.
2. A defendant who does not object in the circuit court to consecutive sentences may not challenge the consecutive-sentencing decision for the first time on appeal.
3. When the record does not demonstrate that the omnibus-hearing procedure was used, Arkansas Rule of Criminal Procedure 16.2 applies, and suppression motions filed forty-seven days before trial are timely under that rule.
4. A defendant is entitled to a hearing on a requested motion to suppress a statement, but Arkansas law does not mandate a pretrial hearing on a motion to suppress a search.
5. The admission of McKinney's statement was harmless beyond a reasonable doubt as to the delivery and possession convictions, but the court could not find it harmless as to the convictions for maintaining a drug premises, simultaneous possession of drugs and a firearm, possession of methamphetamine with intent to deliver, and possession of a firearm by certain persons.

KEY QUOTATIONS

"McKinney's motions for directed verdict merely stated that he did not possess the firearm. He did not argue below that the State failed to prove that he constructively possessed the firearm." (at 220)

"Therefore, we hold that the circuit court abused its discretion in finding that the motions to suppress were untimely filed." (at 221)

"Based on the above, McKinney was entitled to a hearing on his motion to suppress his statement, and the circuit court abused its discretion in denying his request." (at 222)

"If the circuit court determines that the motions lack merit, a new trial will not be required and these convictions will be affirmed." (at 223)

FACTUAL BACKGROUND

Law-enforcement officers used confidential informants to purchase methamphetamine from McKinney at his residence on November 10 and 24, 2015. Officers searched his home under a warrant on January 28, 2016, finding methamphetamine, drug paraphernalia, and a firearm. A jury convicted him of multiple drug- and firearm-related offenses and imposed consecutive sentences totaling 154 years.

PROCEDURAL HISTORY

A Columbia County jury convicted McKinney of multiple methamphetamine- and firearm-related offenses and imposed sentences totaling 154 years. The circuit court denied his pretrial motions to suppress his statement and the search, as well as a motion to compel testing, on untimeliness grounds, and denied his request for a hearing. The Arkansas Court of Appeals affirmed some convictions and the consecutive-sentencing ruling, but reversed and remanded the order denying the suppression motions and the convictions affected by the potentially inadmissible statement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must rule on the merits of McKinney's motion to suppress the search and conduct a hearing on the record limited to the arguments and allegations in his motion to suppress his statement. If either motion has merit, the court must suppress the search and/or statement and order a new trial on the convictions for maintaining a drug premises, simultaneous possession of drugs and a firearm, possession of methamphetamine with intent to deliver, and possession of a firearm by certain persons. If the motions lack merit, a new trial is not required and those convictions are affirmed.

CASES CITED

- Gillard v. State, 372 Ark. 98, 270 S.W.3d 836 (2008)
- Smith v. State, 367 Ark. 274, 239 S.W.3d 494 (2006)
- Conley v. State, 2011 Ark. App. 597, 385 S.W.3d 875
- Brown v. State, 326 Ark. 56, 931 S.W.2d 80 (1996)
- Richardson v. State, 314 Ark. 512, 863 S.W.2d 572 (1993)
- Mixon v. State, 330 Ark. 171, 954 S.W.2d 214 (1997)
- Coon v. State, 76 Ark. App. 250, 65 S.W.3d 889 (2001)
- Rankin v. State, 329 Ark. 379, 948 S.W.2d 397 (1997)
- Greene v. State, 335 Ark. 1, 977 S.W.2d 192 (1998)
- Schalski v. State, 322 Ark. 63, 907 S.W.2d 693 (1995)
- Fahy v. Connecticut, 375 U.S. 85, 84 S. Ct. 229, 11 L. Ed. 2d 171 (1963)
- Bell v. State, 324 Ark. 258, 920 S.W.2d 821 (1996)

