

SUPREME COURT OF MISSISSIPPI

Spann v. State

970 So. 2d 135 (Miss. 2007) · No. No. 2006-KA-01117-SCT · Decided December 6, 2007

SUMMARY

The Supreme Court of Mississippi affirmed Stella Spann’s conviction for selling cocaine and her sentence of thirty years, with fifteen years to serve and five years of post-release supervision. The court held that the evidence supported liability as an aider and abettor, that extrinsic testimony concerning a witness’s prior conduct was inadmissible under Mississippi Rule of Evidence 608(b), and that a lesser-included possession instruction was not warranted.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Diaz, Presiding Justice; Diaz, P.J.; Easley, J.; Graves, J.
JURISDICTION	Mississippi
DECIDED	December 6, 2007
DOCKET	No. 2006-KA-01117-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Spann appealed her conviction for selling a controlled substance and her sentence after the trial court denied a directed verdict, excluded proposed defense-witness testimony, and refused a lesser-included-offense instruction.
STANDARD OF REVIEW	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. Evidentiary rulings are reviewed for abuse of discretion, with review of whether the proper legal standards were applied. Jury instructions are considered together and as a whole; denial of a lesser-included-offense instruction is reviewed under the evidence most favorable to the accused and all reasonable favorable inferences.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Stella Spann v. State of Mississippi

TOPICS

criminal procedure evidence jury instructions lesser included offense instructions appellate procedure

PRACTICE AREAS

criminal law criminal procedure evidence jury instructions appellate procedure

QUESTIONS PRESENTED

1. Whether the State's amendment of the indictment to allege habitual-offender status required reversal.
2. Whether the evidence was sufficient to support Spann's conviction for selling a controlled substance when she did not personally deliver the drugs to the buyer or receive payment.
3. Whether the trial court erred by excluding Reed's testimony concerning Jernigan's alleged prior drug use with Spann.
4. Whether Spann was entitled to a jury instruction on the lesser-included offense of possession.

HOLDINGS

1. The challenge to the indictment amendment was moot because Spann was not sentenced as a habitual offender.
2. The evidence was sufficient to support Spann's conviction because a defendant may be liable as a principal for aiding and abetting a drug sale without personally handing the drugs to the buyer or personally receiving compensation.
3. The trial court properly excluded Reed's testimony because it was extrinsic evidence of specific prior conduct offered to impeach Jernigan, which Rule 608(b) prohibits.
4. The court did not reach Spann's Rule 616 bias argument because it was not raised in the trial court and Spann did not argue plain error.
5. Spann was not entitled to a possession instruction because no evidence supported finding her guilty of possession but not guilty of selling the controlled substance.

KEY QUOTATIONS

"As long as the jury is given a proper instruction on aiding and abetting, the State need only prove 'substantial knowing participation in the consummation of a sale or in arranging for the sale.'" (138)

"The rule clearly states that specific instances of conduct 'may not be proved by extrinsic evidence.'" (139)

"Only where the evidence could only justify a conviction of the principal charge should a lesser offense instruction be refused." (140)

FACTUAL BACKGROUND

A paid confidential informant, Mike Jernigan, was directed by police to purchase crack cocaine and was equipped with audio and video surveillance. Willie Holmes referred Jernigan to Spann, and Spann joined Holmes in obtaining cocaine, after which Jernigan observed Spann hand the drugs to Holmes, who delivered

them to Jernigan. Spann asked Jernigan for compensation for obtaining the drugs, and testing established that the substance was cocaine base. The defense sought to introduce testimony from Mary Reed concerning prior drug use with Jernigan and Spann, but the trial court excluded it.

PROCEDURAL HISTORY

Spann was convicted of selling a controlled substance under Mississippi Code Section 41-29-139 and sentenced to thirty years in custody, with fifteen years to serve and five years of supervised probation. She appealed, challenging an indictment amendment, the sufficiency of the evidence, exclusion of defense testimony, and denial of a possession instruction. The Supreme Court of Mississippi affirmed the conviction and sentence.

DISPOSITION

affirmed

CASES CITED

- Bush v. State, 895 So. 2d 836, 843 (Miss. 2005)
- Jackson v. Virginia, 443 U.S. 307, 315 (1979)
- Carr v. State, 208 So. 2d 886, 889 (Miss. 1968)
- Edwards v. State, 469 So. 2d 68, 70 (Miss. 1985)
- Sullivan v. State, 749 So. 2d 983, 993 (Miss. 1999)
- Turner v. State, 573 So. 2d 1340 (Miss. 1990)
- Williams v. State, 463 So. 2d 1064, 1066 (Miss. 1985)
- Hoops v. State, 681 So. 2d 521, 533 (Miss. 1996)
- Sayles v. State, 552 So. 2d 1383, 1389 (Miss. 1989)
- Milano v. State, 790 So. 2d 179, 185 (Miss. 2001)
- Peterson v. State, 671 So. 2d 647, 655-656 (Miss. 1995)
- Baine v. State, 606 So. 2d 1076, 1078 (Miss. 1992)
- Wade v. State, 583 So. 2d 965, 967 (Miss. 1991)
- Parker v. State, 606 So. 2d 1132, 1137-1138 (Miss. 1992)
- Pinson v. State, 518 So. 2d 1220, 1223 (Miss. 1988)
- Flowers v. State, 947 So. 2d 910, 927 (Miss. 2006)
- Austin v. State, 784 So. 2d 186, 192 (Miss. 2001)
- Howell v. State, 860 So. 2d 704, 745 (Miss. 2003)
- Heidel v. State, 587 So. 2d 835, 842 (Miss. 1991)
- Adkins v. Sanders, 871 So. 2d 732, 736 (Miss. 2004)
- Coleman v. State, 697 So. 2d 777, 782 (Miss. 1997)
- Ormond v. State, 599 So. 2d 951, 961 (Miss. 1992)
- Mease v. State, 539 So. 2d 1324, 1330 (Miss. 1989)

- *Ladnier v. State*, 878 So. 2d 926, 932 (Miss. 2004)
- *Toliver v. State*, 600 So. 2d 186, 192 (Miss. 1992)
- *Reynolds v. State*, 658 So. 2d 852, 856 (Miss. 1995)

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