

SUPREME COURT OF KANSAS

State v. Kesselring

279 Kan. 671 (2005) · No. No. 91,051 · Decided June 3, 2005

SUMMARY

The Supreme Court of Kansas affirmed Michael Kesselring’s convictions for aggravated kidnapping, conspiracy to commit aggravated kidnapping, and first-degree murder. The court held that the jury’s verdict was unanimous despite alternative theories of premeditated and felony murder and that the aggravated kidnapping constituted a continuous incident rather than multiple acts. The court also upheld Kesselring’s felony-murder sentencing and addressed issues concerning lesser-included-offense instructions, hearsay, polygraph references, and admission of jail letters.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.; Lockett, J., retired and assigned
JURISDICTION	Kansas
DECIDED	June 3, 2005
DOCKET	No. 91,051
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kesselring directly appealed his convictions and sentences for aggravated kidnapping, conspiracy to commit aggravated kidnapping, and first-degree murder under alternative theories of premeditated murder and felony murder.
STANDARD OF REVIEW	Jury-unanimity issues are reviewed de novo. Sufficiency of the evidence is reviewed by considering whether, viewing all evidence in the light most favorable to the prosecution, a rational factfinder could have found guilt beyond a reasonable doubt. Whether conduct constitutes multiple acts is a question of law subject to unlimited review. Failure to give a lesser-included-offense instruction is reviewed for clear error when the issue was not preserved. Evidentiary rulings are reviewed under the applicable abuse-of-discretion and harmless-error standards, and unpreserved evidentiary issues generally are not considered.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Kansas; precedential.

TOPICS

criminal procedure

jury instructions

lesser included offense instructions

hearsay

preservation of error

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the jury unanimously found Kesselring guilty of first-degree murder and aggravated kidnapping.
2. Whether the evidence was sufficient to support first-degree murder under both premeditated-murder and felony-murder theories.
3. Whether the aggravated-kidnapping charge involved multiple acts requiring a unanimity instruction.
4. Whether the absence of a verdict form specifying the murder theory required reversal or affected sentencing.
5. Whether Kesselring was properly sentenced for felony murder when the jury did not specify which first-degree-murder theory it unanimously adopted.
6. Whether the trial court clearly erred by failing to instruct on kidnapping, criminal restraint, or second-degree murder as lesser included offenses.
7. Whether references to polygraph examinations violated Kesselring's right to a fair trial.
8. Whether the trial court improperly admitted hearsay statements attributed to deceased witness Michael Reece.
9. Whether admission of Kesselring's letters violated the Fifth or Fourth Amendment.

HOLDINGS

1. Kansas law treats premeditated murder and felony murder as alternative means of committing the single offense of first-degree murder. The jury need not unanimously agree on the particular means if substantial evidence supports each means, but it must unanimously agree that the defendant committed the single charged offense.
2. The evidence was sufficient for a rational jury to find Kesselring guilty of first-degree murder under both premeditated-murder and felony-murder theories.
3. The aggravated-kidnapping charge was not a multiple-acts case because the kidnapping constituted one continuous, factually inseparable incident; no multiple-acts unanimity instruction was required.
4. The absence of a verdict form allowing the jury to specify whether it unanimously agreed on premeditated murder or felony murder did not require reversal of the murder conviction because the

evidence supported both theories and the instructions adequately required unanimity as to the charged offense.

5. Kesselring was properly sentenced as a felony murderer, with parole eligibility after 20 years, rather than as a premeditated murderer, which would have required 25-year parole eligibility.
6. The trial court did not clearly err by declining to instruct on kidnapping, criminal restraint, or second-degree murder.
7. References to polygraph examinations did not warrant relief because the testimony was elicited by defense counsel and any error was not constitutional error.
8. The hearsay claims did not warrant reversal. Most claims were unpreserved, the brief hearsay testimony concerning Heather's conversation was harmless, and any error in admitting Callarman's testimony about Reece's statement was harmless.
9. Kesselring could not obtain appellate relief based on admission of his letters because he introduced the letters himself and failed to make a timely, specific constitutional objection.

KEY QUOTATIONS

"In reviewing the sufficiency of the evidence, this court will not reweigh the evidence. It is the jury's function, not ours, to weigh the evidence and determine the credibility of witnesses." (679)

"The incident here was not susceptible to dissection into further components that would constitute multiple acts; rather, it was a continuous incident that cannot be factually separated." (683)

"The lack of a verdict form only affects the ability of the trial court to sentence Kesselring for premeditated murder." (684)

"Certainly, Kesselring cannot complain on appeal that the trial court erroneously admitted evidence which Kesselring himself introduced." (693)

FACTUAL BACKGROUND

Dale Alan Miller disappeared after being accused of stealing a large quantity of drugs from a drug ring. Evidence showed that Michael Reece recruited Kesselring and others to locate Miller, that Miller was forced into a car and held at gunpoint, and that Kesselring later shot Miller multiple times and helped move and bury his body. The prosecution relied principally on testimony from participants and witnesses, including Gary Holmes, as well as physical evidence, admissions, and letters written by Kesselring.

PROCEDURAL HISTORY

A jury convicted Kesselring of aggravated kidnapping, conspiracy to commit aggravated kidnapping, and first-degree murder. The trial court imposed a controlling life sentence with parole eligibility after 20 years, plus 234 months' imprisonment. The Supreme Court of Kansas affirmed the convictions and sentences.

DISPOSITION

affirmed

CASES CITED

- State v. Hoge, 276 Kan. 801, 80 P.3d 52 (2003)
- State v. Doyle, 272 Kan. 1157, 38 P.3d 650 (2002)
- State v. Beach, 275 Kan. 603, 67 P.3d 121 (2003)
- State v. Meeks, 277 Kan. 609, 88 P.3d 789 (2004)
- State v. Davis, 275 Kan. 107, 61 P.3d 701 (2003)
- State v. Staggs, 27 Kan. App. 2d 865, 9 P.3d 601, rev. denied 270 Kan. 903 (2000)
- State v. Hill, 271 Kan. 929, 26 P.3d 1267 (2001)
- State v. Vontress, 266 Kan. 248, 970 P.2d 42 (1998)
- State v. Drennan, 278 Kan. 704, 101 P.3d 1218 (2004)
- State v. Hernandez, 253 Kan. 705, 861 P.2d 814 (1993)
- State v. Deal, 271 Kan. 483, 23 P.3d 840 (2001)
- State v. Mays, 277 Kan. 359, 85 P.3d 1208 (2004)
- State v. Marsh, 278 Kan. 520, 102 P.3d 445 (2004)
- State v. Morris, 255 Kan. 964, 880 P.2d 1244 (1994)
- State v. Martis, 277 Kan. 267, 83 P.3d 1216 (2004)
- State v. Flynn, 274 Kan. 473, 55 P.3d 324 (2002)
- Crawford v. Washington, 541 U.S. 36 (2004)
- State v. Hebert, 277 Kan. 61, 82 P.3d 470 (2004)
- State v. Diggs, 272 Kan. 349, 34 P.3d 63 (2001)