

SUPREME COURT OF THE STATE OF KANSAS

State v. Breitenbach

Breitenbach · No. No. 120,503 · Decided March 26, 2021

SUMMARY

The Kansas Supreme Court affirmed Corbin J. Breitenbach's convictions for attempted capital murder, aggravated criminal sodomy, and aggravated burglary. The court held that the district court did not abuse its discretion in denying requests for independent DNA testing, substitute counsel, standby counsel, or a new trial, and addressed the standards governing expert services for indigent defendants, attorney substitution, self-representation, and Brady claims.

CASE DETAILS

COURT	Supreme Court of the State of Kansas
WRITING FOR THE COURT	Wilson, J.; Michael E. Ward, Senior Judge, assigned
JURISDICTION	Kansas
DECIDED	March 26, 2021
DOCKET	No. 120,503
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions after a jury trial for attempted capital murder, aggravated criminal sodomy, and aggravated burglary.
STANDARD OF REVIEW	Authorization of expert services, appointment of substitute counsel, and appointment of standby counsel are reviewed for abuse of discretion. The existence of a Brady violation is reviewed de novo with deference to factual findings, while denial of a motion for new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Corbin J. Breitenbach v. State of Kansas

TOPICS

criminal procedure right to counsel due process evidence appellate procedure

PRACTICE AREAS

criminal procedure constitutional law evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Breitenbach's request for publicly funded independent DNA testing.
2. Whether the district court abused its discretion by denying Breitenbach's request for substitute appointed counsel.
3. Whether the district court abused its discretion by denying Breitenbach's request for standby counsel after he elected self-representation.
4. Whether the State violated Brady v. Maryland by disclosing a fingerprint-analysis report during trial rather than earlier.
5. Whether cumulative error deprived Breitenbach of a fair trial.

HOLDINGS

1. An indigent defendant seeking publicly funded expert services must show both financial inability to pay and that the requested services are necessary to an adequate defense. A defendant has no absolute right to independent DNA testing upon request and must make a specific showing of need.
2. A defendant seeking substitute appointed counsel must show justifiable dissatisfaction, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication. A defendant has no right to choose which attorney will be appointed, and dissatisfaction based on a matter that replacement counsel could not remedy does not establish justifiable dissatisfaction.
3. The appointment of standby counsel for a self-represented defendant is committed to the sound discretion of the trial court and is not compelled merely because standby counsel might assist the defendant or make the court's work easier.
4. Delayed disclosure of potentially favorable evidence does not constitute a Brady violation unless the defendant establishes that the delay prevented effective use of the evidence and caused material prejudice. The fingerprint report was disclosed during trial, and Breitenbach did not show that the disclosure was suppressed or that the evidence created a reasonable probability of a different result.

KEY QUOTATIONS

“Requests for the appointment of experts are to be measured by the requirements of the due process test of fundamental fairness.” (15)

“The district court concluded, based on the correct legal standard, that Breitenbach did not have an absolute right to independent testing on mere request but that he must make a specific showing of need.” (18)

“Our state and federal Constitutions guarantee criminal defendants the right to effective assistance of counsel, but they do not guarantee the defendant the right to choose which attorney will be appointed to represent him or her.” (22)

“There are three components or essential elements of a Brady violation claim:” (31)

FACTUAL BACKGROUND

A seven-year-old child was severely assaulted in an apartment and sustained extensive strangulation and sexual injuries. DNA recovered during the sexual-assault examination produced a mixed profile whose major contributor was consistent with Breitenbach, and additional evidence included the victim's identification of Breitenbach, blood matching the victim on his shoes, and incriminating statements he made to family members. Breitenbach sought additional DNA testing, substitute counsel, standby counsel, and relief based on delayed disclosure of a fingerprint report, but the district court denied those requests.

PROCEDURAL HISTORY

Breitenbach was charged in Sedgwick County District Court and initially represented by appointed counsel. He later proceeded pro se after the court denied requests for substitute counsel, standby counsel, and publicly funded independent DNA testing. A jury convicted him of all charges, and the district court denied his motion for a new trial. He appealed directly to the Kansas Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Owens, 248 Kan. 273, 807 P.2d 101 (1991)
- State v. Thomas, 307 Kan. 733, 415 P.3d 430 (2018)
- Landrum v. Goering, 306 Kan. 867, 397 P.3d 1181 (2017)
- State v. Dunn, 243 Kan. 414, 758 P.2d 718 (1988)
- State v. Lee, 221 Kan. 109, 558 P.2d 1096 (1976)
- Mason v. Arizona, 504 F.2d 1345 (9th Cir. 1974)
- United States v. Gonzales, 150 F.3d 1246 (10th Cir. 1998)
- United States v. Kennedy, 64 F.3d 1465 (10th Cir. 1995)
- Ake v. Oklahoma, 470 U.S. 68 (1985)
- State v. Snodgrass, 252 Kan. 253, 843 P.2d 720 (1992)
- State v. Reynolds, 230 Kan. 532, 639 P.2d 461 (1982)
- State v. Ward, 292 Kan. 541, 256 P.3d 801 (2011)
- State v. McGee, 280 Kan. 890, 126 P.3d 1110 (2006)
- State v. Hulett, 293 Kan. 312, 263 P.3d 153 (2011)
- State v. Brown, 300 Kan. 565, 331 P.3d 797 (2014)
- State v. Sappington, 285 Kan. 158, 169 P.3d 1096 (2007)
- State v. Smith, 291 Kan. 751, 247 P.3d 676 (2011)
- State v. Hedges, 269 Kan. 895, 8 P.3d 1259 (2000)
- State v. LaPointe, 42 Kan. App. 2d 522, 214 P.3d 684 (2009)
- State v. Matzke, 236 Kan. 833, 696 P.2d 396 (1985)
- Faretta v. California, 422 U.S. 806 (1975)

- State v. Stewart, 306 Kan. 237, 393 P.3d 1031 (2017)
- Brady v. Maryland, 373 U.S. 83 (1963)
- State v. Warrior, 294 Kan. 484, 277 P.3d 1111 (2012)
- State v. Lackey, 295 Kan. 816, 286 P.3d 859 (2012)
- State v. Hirsh, 310 Kan. 321, 446 P.3d 472 (2019)
- State v. Marshall, 303 Kan. 438, 362 P.3d 587 (2015)

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