

SUPREME COURT OF KANSAS

State v. Clark

298 Kan. 843 (2014) · Decided February 7, 2014

SUMMARY

The Kansas Supreme Court affirmed Robert D. Clark’s convictions for two counts of aggravated indecent liberties with a child, holding that circumstantial evidence was sufficient to establish the required specific intent. The court vacated the lifetime postrelease supervision imposed with his off-grid life sentences and remanded for correction of the journal entry imposing lifetime electronic monitoring.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.
JURISDICTION	Kansas
DECIDED	February 7, 2014
DISPOSITION	remanded
PROCEDURAL POSTURE	Clark directly appealed his jury convictions and sentences to the Supreme Court of Kansas after receiving concurrent off-grid life sentences with mandatory minimum terms of 25 years, lifetime postrelease supervision, and lifetime electronic monitoring.
STANDARD OF REVIEW	For sufficiency of the evidence, the court reviews all evidence in the light most favorable to the prosecution and asks whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. The court does not reweigh evidence, assess witness credibility, or resolve conflicting evidence.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	Robert D. Clark v. State of Kansas

TOPICS

- criminal procedure
- evidence
- sentencing
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether sufficient evidence supported the jury's finding that Clark touched the children with the specific intent to arouse or satisfy sexual desires.
2. Whether the sentencing court had authority to impose lifetime postrelease supervision in conjunction with off-grid indeterminate life sentences.
3. Whether the sentencing court had authority to impose lifetime electronic monitoring, and whether the erroneous provision in the journal entry required correction.

HOLDINGS

1. The evidence was sufficient for a rational factfinder to find beyond a reasonable doubt that Clark engaged in the prohibited touching with the specific intent to arouse or satisfy his sexual desires, the children's sexual desires, or both.
2. A sentencing court lacks authority to impose lifetime postrelease supervision in conjunction with an off-grid indeterminate life sentence.
3. The sentencing court lacks authority to impose lifetime electronic monitoring because electronic monitoring is a condition of parole imposed by the Kansas Prisoner Review Board, not a sentencing-court-ordered sentence provision.

KEY QUOTATIONS

“When examining the sufficiency of the evidence in a criminal case, the standard of review is whether, after reviewing all the evidence in the light most favorable to the prosecution, the appellate court is convinced that a rational factfinder could have found the defendant guilty beyond a reasonable doubt.” (849)

“Indeed, there was significant circumstantial evidence the touching was not accidental but was intentional, repeated, and motivated by the intent to arouse the sexual desires of Clark, his granddaughters, or both; and circumstantial evidence can be sufficient to meet the State’s burden of proof beyond a reasonable doubt.” (850)

“An inmate who has received an off-grid indeterminate life sentence can leave prison only if the [Kansas Prisoner Review] Board grants the inmate parole. Therefore, a sentencing court has no authority to order a term of [lifetime] post-release supervision in conjunction with an off-grid indeterminate life sentence.” (851)

“When the [Kansas prisoner review] board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate’s natural life.” (852)

FACTUAL BACKGROUND

Clark repeatedly touched the breasts of his two granddaughters, A.L. and C.L., over their clothing during visits at his son's home and Clark's apartment. The touching occurred frequently over several months, continued after A.L. told Clark to stop, and was accompanied by Clark's admissions that he knew the conduct was inappropriate.

The children testified about the touching, and Clark made statements to investigators and kept a journal reflecting his awareness that he could face criminal consequences.

PROCEDURAL HISTORY

A jury convicted Clark of two counts of aggravated indecent liberties with a child under 14. The district court imposed concurrent life sentences with mandatory minimum terms of 25 years and entered lifetime postrelease supervision and lifetime electronic monitoring. The Supreme Court of Kansas affirmed the convictions, vacated the lifetime postrelease supervision and the electronic-monitoring provision, and remanded for correction of the journal entry.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The district court must issue a nunc pro tunc order correcting the journal entry to remove lifetime electronic monitoring and vacate the postrelease-supervision term. The convictions remain affirmed; the sentences are vacated in part.

CASES CITED

- State v. Brown, 291 Kan. 646, 654, 244 P.3d 267 (2011)
- State v. Belcher, 269 Kan. 2, 7, 4 P.3d 1137 (2000)
- State v. Raskie, 293 Kan. 906, 919-20, 269 P.3d 1268 (2012)
- State v. Ward, 292 Kan. 541, 581, 256 P.3d 801 (2011), cert. denied, 132 S. Ct. 1594 (2012)
- State v. Northcutt, 290 Kan. 224, 231, 224 P.3d 564 (2010)
- State v. Spear, 297 Kan. 780, 791, 304 P.3d 1246 (2013)
- State v. Ta, 296 Kan. 230, 237, 290 P.3d 652 (2012)
- State v. Brown, 295 Kan. 181, 201, 284 P.3d 977 (2012)
- State v. Becker, 290 Kan. 842, 852, 235 P.3d 424 (2010)
- State v. Phillips, 295 Kan. 929, 949, 287 P.3d 245 (2012)
- State v. Otto, 305 Conn. 51, 73, 43 A.3d 629 (2012)
- State v. Summers, 293 Kan. 819, 832, 272 P.3d 1 (2012)
- State v. Cash, 293 Kan. 326, Syl. ¶ 2, 263 P.3d 786 (2011)
- State v. Harsh, 293 Kan. 585, 590, 265 P.3d 1161 (2011)
- State v. Floyd, 296 Kan. 685, 690-91, 294 P.3d 318 (2013)
- State v. Ross, 295 Kan. 1126, 1134, 289 P.3d 76 (2012)
- State v. Mason, 294 Kan. 675, 677, 279 P.3d 707 (2012)
- State v. Jolly, 291 Kan. 842, 848, 249 P.3d 421 (2011)
- State v. Waggoner, 297 Kan. 94, 100, 298 P.3d 333 (2013)

- State v. Beaman, 295 Kan. 853, 869, 286 P.3d 876 (2012)
- Abasolo v. State, 284 Kan. 299, Syl. ¶ 3, 160 P.3d 471 (2007)
- State v. Lyon, 207 Kan. 378, 381-82, 485 P.2d 332 (1971)

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