

SUPREME COURT OF KANSAS

State v. Gilbert, 272 Kan. 209

32 P.3d 713 (2001) · No. No. 85,431 · Decided October 19, 2001

SUMMARY

The Kansas Supreme Court affirmed Terry Lee Gilbert's convictions for first-degree felony murder, aggravated robbery, aggravated burglary, and criminal damage to property. The court rejected challenges concerning invocation and waiver of the right to counsel, cross-examination regarding the victim's reputation, access to admitted exhibits, and the failure to instruct on lesser included offenses.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Larson, J.
JURISDICTION	Kansas
DECIDED	October 19, 2001
DOCKET	No. 85,431
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gilbert appealed his jury convictions for first-degree felony murder, aggravated robbery, aggravated burglary, and criminal damage to property. He challenged the denial of his motion to suppress statements, restrictions on cross-examination concerning the victim's reputation, the State's failure to provide copies of admitted exhibits, and the failure to give lesser included offense instructions for felony murder.
STANDARD OF REVIEW	The court reviewed preservation of the suppression issue for compliance with the contemporaneous-objection requirement; reviewed the trial court's ruling on cross-examination concerning the victim's reputation for abuse of discretion; assessed the discovery and exhibit claim for prejudicial error; and reviewed the lesser-included-offense instruction issue under the rule governing felony-murder instructions.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	Terry Lee Gilbert v. State of Kansas

TOPICS

criminal procedure suppression of evidence right to counsel jury instructions
lesser included offense instructions

PRACTICE AREAS

criminal law criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether Gilbert's statements should have been suppressed because police failed to honor his asserted request for counsel.
2. Whether the trial court improperly restricted cross-examination concerning the victim's reputation for dishonesty.
3. Whether the State's failure to provide copies of photographs and a photocopy admitted into evidence required a mistrial or otherwise constituted prejudicial error.
4. Whether the trial court was required to instruct the jury on lesser included offenses of felony murder.

HOLDINGS

1. The suppression issue was not properly preserved because Gilbert did not timely and specifically object when most of the statements were admitted at trial; in any event, the statements were properly admitted because Gilbert volunteered information, later knowingly waived his Miranda rights, and the trial court found his claim of impairment not credible.
2. The trial court acted within its discretion in refusing to permit Gilbert to place the victim's reputation for dishonesty at issue.
3. The failure to provide Gilbert with copies of photographs and a photocopy admitted into evidence did not warrant a mistrial or reversal because the exhibits were available for defense examination and Gilbert failed to demonstrate prejudice.
4. The trial court was not required to give lesser included offense instructions because the evidence of the underlying aggravated burglary and aggravated robbery was strong, convincing, and not weak, inconclusive, or conflicting.

KEY QUOTATIONS

"When a pretrial motion to suppress has been denied, the moving party must object to introduction of the evidence at trial in order to preserve the issue for appeal." (at 212)

"When murder is committed during the commission of a felony, the rule requiring instructions on lesser included offenses does not apply." (at 214)

FACTUAL BACKGROUND

Jarold Johnson was found dead in his Salina, Kansas, residence. After initially stating that he would not speak without an attorney, Gilbert initiated further conversation, received Miranda warnings, signed written waivers, and made statements admitting involvement in the incident. The State's evidence showed that Gilbert and others forcibly entered Johnson's home, assaulted him, and took money and cigarettes, while Gilbert claimed he went to collect a debt and did not intend to rob Johnson.

PROCEDURAL HISTORY

After Gilbert was arrested and questioned, the district court denied his motion to suppress statements. At trial, the jury convicted him of first-degree felony murder, aggravated robbery, aggravated burglary, and criminal damage to property. The Supreme Court of Kansas exercised jurisdiction under K.S.A. 22-3601(b)(1), addressing the preserved and merits issues and affirming.

DISPOSITION

affirmed

CASES CITED

- State v. Branning, 271 Kan. 877, 26 P.3d 673 (2000)
- State v. Jones, 267 Kan. 627, 637, 984 P.2d 132 (1999)
- State v. Sims, 265 Kan. 166, 174-75, 960 P.2d 1271 (1998)
- State v. Russell, 217 Kan. 481, 484, 536 P.2d 1392 (1975)
- State v. Adam, 257 Kan. 693, 896 P.2d 1022 (1995)
- State v. Fike, 243 Kan. 365, 368, 757 P.2d 724 (1988)
- State v. Hunt, 270 Kan. 203, 211, 14 P.3d 430 (2000)
- State v. Strauch, 239 Kan. 203, 218, 718 P.2d 613 (1986)

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