

SUPREME COURT OF KANSAS

State v. Wilson

295 Kan. 605 (2012) · Decided September 28, 2012

SUMMARY

The Kansas Supreme Court reviews Kenneth E. Wilson’s convictions for premeditated first-degree murder, aggravated burglary, burglary, and criminal possession of a firearm. The court addresses the admission of a 911 recording and evidence of seven uncharged burglaries under K.S.A. 60-455, including the issues of probative value, prejudice, identity, and plan. Wilson also raises multiple sentencing and constitutional challenges.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Moritz, J.
JURISDICTION	Kansas
DECIDED	September 28, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Direct appeal from convictions for premeditated first-degree murder, aggravated burglary, burglary, and criminal possession of a firearm, and from the resulting sentences.
STANDARD OF REVIEW	Abuse of discretion for admission of the 911 recording, the probativity and prejudice determinations under K.S.A. 60-455, and the balancing of probative value against undue prejudice; de novo for materiality and statutory interpretation; plain-error analysis for preserved prosecutorial-misconduct claims; and dismissal for lack of jurisdiction over a presumptive sentence.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Kenneth E. Wilson v. State of Kansas

TOPICS

- evidence
- criminal procedure
- prosecutorial misconduct
- sentencing
- appellate jurisdiction

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by admitting a portion of the victim's wife's 911 recording when its probative value was allegedly outweighed by undue prejudice.
2. Whether evidence of seven uncharged burglaries was relevant and admissible under K.S.A. 60-455 to prove identity and plan, and whether its probative value outweighed its prejudicial effect.
3. Whether the prosecutor committed misconduct by arguing facts not in evidence regarding a possible accomplice's role in one burglary.
4. Whether the prosecutor improperly shifted the burden of proof by commenting on Wilson's inability to explain DNA evidence.
5. Whether cumulative trial error required reversal.
6. Whether the district court properly imposed a hard 50 sentence despite challenges to two aggravating circumstances.
7. Whether the Kansas hard 50 sentencing scheme was constitutional under Apprendi and Cunningham.
8. Whether the sentencing court properly ordered lifetime registration under the Kansas Offender Registration Act.
9. Whether the aggravated grid-box sentence violated the Sixth and Fourteenth Amendments and whether the court had jurisdiction to review that sentence.
10. Whether use of Wilson's prior convictions to enhance his sentence violated Apprendi and the Sixth and Fourteenth Amendments.

HOLDINGS

1. The district court did not abuse its discretion in admitting the portion of the 911 recording played to the jury because its probative value outweighed its potential for undue prejudice.
2. The seven uncharged burglaries were admissible under K.S.A. 60-455 to prove the disputed material fact of identity.
3. The court did not need to decide whether the evidence was independently admissible to prove plan because it was properly admitted to prove identity; any possible error in admitting it for plan was harmless.
4. The prosecutor's argument suggesting that McBroom may have acted as a lookout did not warrant reversal.
5. The prosecutor did not improperly shift the burden of proof by noting that Wilson had no explanation for DNA found on cigarette butts at two crime scenes.
6. Cumulative error did not require reversal because the court identified at most one potential error, and one error is insufficient to support reversal under the cumulative-error doctrine.

7. The hard 50 sentence was properly imposed; even if the two challenged aggravating-circumstance findings were erroneous, the two remaining aggravating circumstances were not outweighed by any mitigating circumstances.
8. Kansas's hard 50 sentencing scheme was constitutional under the authorities then controlling the court.
9. The sentencing court correctly classified Wilson as a violent offender subject to lifetime registration under the Kansas Offender Registration Act.
10. The court dismissed Wilson's challenge to the aggravated grid-box sentence because it lacked jurisdiction to review a presumptive sentence.
11. Use of Wilson's prior convictions to enhance his sentence without jury findings beyond a reasonable doubt did not violate the Sixth or Fourteenth Amendments under controlling Kansas precedent.

KEY QUOTATIONS

“Similarities must be shown in order to establish relevancy. It is not sufficient simply to show that the offenses were violations of the same or similar statutes; there should be some evidence of the underlying facts showing the manner in which the other offense was committed so as to raise a reasonable inference that the same person committed both offenses.” (618)

“Although prosecutors may argue reasonable inferences from the evidence, prosecutors may not comment upon facts outside the evidence.” (623)

FACTUAL BACKGROUND

Wilson was convicted in connection with the March 25, 2008, murder of Scott Noel and burglaries of the Noel and Fink homes. Evidence included Wilson's DNA on cigarette butts found at the Noel and Livgren residences, identification of stolen property in Wilson's home and RV, testimony placing him near several rural burglaries, and testimony concerning his travel during the relevant periods. The State also introduced evidence of seven uncharged burglaries to prove identity and plan under K.S.A. 60-455.

PROCEDURAL HISTORY

A jury convicted Wilson of premeditated first-degree murder, aggravated burglary, burglary, and criminal possession of a firearm. The district court imposed a hard 50 sentence for murder, consecutive sentences for the remaining convictions, and lifetime offender registration. Wilson appealed directly to the Supreme Court of Kansas, challenging evidentiary rulings, prosecutorial arguments, cumulative error, and several sentencing issues.

DISPOSITION

other

CASES CITED

- State v. Wells, 289 Kan. 1219, 1227, 221 P.3d 561 (2009)

- State v. Ward, 292 Kan. 541, 550, 256 P.3d 801 (2011)
- State v. Reed, 282 Kan. 272, 274, 281-82, 144 P.3d 677 (2006)
- State v. Meeks, 277 Kan. 609, 618-20, 88 P.3d 789 (2004)
- State v. Abu-Fakher, 274 Kan. 584, 597-98, 56 P.3d 166 (2002)
- State v. Williams, 235 Kan. 485, 493, 681 P.2d 660 (1984)
- State v. Warledo, 286 Kan. 927, 938, 190 P.3d 937 (2008)
- State v. Hollingsworth, 289 Kan. 1250, 1258, 221 P.3d 1122 (2009)
- State v. Riojas, 288 Kan. 379, 383, 204 P.3d 578 (2009)
- State v. Higgenbotham, 271 Kan. 582, Syl. ¶ 3, 23 P.3d 874 (2001)
- State v. Howard, 220 Kan. 117, 120, 551 P.2d 835 (1976)
- State v. Inkelaar, 293 Kan. 414, 426, 264 P.3d 81 (2011)
- State v. Edwards, 291 Kan. 532, Syl. ¶ 11, 243 P.3d 683 (2010)
- State v. Becker, 290 Kan. 842, 856, 235 P.3d 424 (2010)
- State v. Naputi, 293 Kan. 55, 58, 260 P.3d 86 (2011)
- State v. King, 288 Kan. 333, Syl. ¶ 10, 204 P.3d 585 (2009)
- State v. Tosh, 278 Kan. 83, 91 P.3d 1204 (2004)
- State v. Duong, 292 Kan. 824, 832-33, 257 P.3d 309 (2011)
- State v. Stone, 291 Kan. 13, 18, 237 P.3d 1229 (2010)
- State v. Burden, 30 Kan. App. 2d 690, 696, 703, 46 P.3d 570 (2002), rev'd on other grounds, 275 Kan. 934, 69 P.3d 1120 (2003)
- State v. Cofield, 288 Kan. 367, 378, 203 P.3d 1261 (2009)
- State v. Johnson, 284 Kan. 18, 22-23, 159 P.3d 161 (2007)
- State v. Ellmaker, 289 Kan. 1132, 1156, 221 P.3d 1105 (2009)
- State v. Arnett, 290 Kan. 41, 47, 223 P.3d 780 (2010)
- State v. Johnson, 286 Kan. 824, Syl. ¶ 6, 190 P.3d 207 (2008)
- State v. Fewell, 286 Kan. 370, 396, 184 P.3d 903 (2008)
- State v. Ivory, 273 Kan. 44, 46, 41 P.3d 781 (2002)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856, 166 L. Ed. 2d 856 (2007)