

SUPREME COURT OF KANSAS

State v. Hoge, 276 Kan. 801

80 P.3d 52 (2003) · No. No. 88,454 · Decided December 12, 2003

SUMMARY

The Supreme Court of Kansas affirmed Joby M. Hoge’s convictions for first-degree murder and aggravated burglary. The court held that the trial court did not err by refusing lesser-included-offense instructions, permitting conviction under alternative theories of first-degree murder, admitting or excluding the challenged evidence, or responding to a jury question. The opinion also addressed jury unanimity and the sufficiency of evidence supporting premeditation.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Gernon, J.
JURISDICTION	Kansas
DECIDED	December 12, 2003
DOCKET	No. 88,454
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hoge appealed his convictions for first-degree murder and aggravated burglary to the Supreme Court of Kansas pursuant to K.S.A. 22-3601(b)(1), challenging the jury instructions, unanimity of the murder verdict, sufficiency of the evidence, exclusion of evidence, and the trial court's response to a jury question.
STANDARD OF REVIEW	Requested lesser-included-offense instructions are reviewed in the light most favorable to the defendant. Jury-instruction issues are reviewed by considering the instructions as a whole; an instruction is clearly erroneous if there is a real possibility the jury would have rendered a different verdict without the error. Jury unanimity is reviewed de novo. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, a rational factfinder could have found guilt beyond a reasonable doubt. Admission or exclusion of evidence and responses to jury questions are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.

TOPICS

jury instructions

lesser included offense instructions

criminal procedure

evidence

appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Jury instructions

Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by refusing to instruct the jury on intentional second-degree murder as a lesser included offense.
2. Whether premeditated murder and felony murder are separate crimes requiring jury unanimity as to the underlying theory, or alternate means of committing first-degree murder.
3. Whether the trial court's instructions on combined premeditated-murder and felony-murder theories were legally erroneous.
4. Whether the evidence was sufficient to establish premeditation and whether foreseeability should be an additional factor in determining premeditation.
5. Whether the trial court improperly excluded evidence that Winn sold drugs.
6. Whether the trial court improperly responded to the jury's question regarding the premeditated-murder instruction and aiding-and-abetting liability.

HOLDINGS

1. The trial court did not err in refusing to give an intentional second-degree-murder instruction because the evidence did not support a reasonable finding that Hoge committed second-degree murder rather than premeditated first-degree murder. Although the trial court relied on the wrong analysis concerning the felony-murder theory, its result was correct under the premeditated-murder theory.
2. Premeditated murder and felony murder are alternate means of proving the single crime of first-degree murder, not separate and distinct crimes. Jury unanimity is required as to guilt of first-degree murder, but not as to the alternative means by which the crime was committed, so long as substantial evidence supports each alternative means.
3. The trial court did not erroneously instruct the jury regarding the alternative premeditated-murder and felony-murder theories. The instructions, considered as a whole, correctly stated the law and clarified the circumstances under which the jury could return a combined-theories verdict.
4. The evidence was sufficient for a rational factfinder to find premeditation beyond a reasonable doubt. The court declined to add foreseeability as a new factor for determining premeditation.
5. The trial court did not abuse its discretion by excluding evidence that Winn sold drugs because the evidence was irrelevant to Hoge's compulsion defense and did not impeach a witness or the State's theory that Winn was killed during an aggravated burglary.

6. The court did not address the merits of Hoge's challenge to the response to the jury question because the issue was not properly preserved. In any event, the record did not show a real possibility that a different response would have produced a different verdict.

KEY QUOTATIONS

“It is important to note that the Vontress court made this statement without analyzing whether premeditated murder and felony murder were separate crimes.” (809)

“The jury was not required to agree on the means by which Hoge committed the crime as long as both alternative means were supported by the evidence.” (813)

“As a result, Hoge has failed to preserve this issue on appeal, and we will not address it.” (818)

FACTUAL BACKGROUND

Ivan Winn was found dead in his Wichita home after a forced entry through a bathroom window. Police found multiple bullet casings and bullets, and fingerprint analysis later matched fingerprints from the house and window to Hoge. During a police interview, Hoge eventually admitted that he and Quincy Hadley entered Winn's home to rob him, that Hadley possessed a gun, and that Hoge helped pry open the window, although Hoge claimed compulsion because Hadley threatened to beat or shoot him. The evidence showed multiple shots fired toward Winn's bed and a fatal shot to Winn's head.

PROCEDURAL HISTORY

Hoge was charged with premeditated first-degree murder, felony first-degree murder, and aggravated burglary. The State proceeded on both murder theories. The jury found Hoge guilty of first-degree murder under combined premeditated-murder and felony-murder theories and guilty of aggravated burglary. The trial court imposed a life sentence with a minimum of 20 years before parole eligibility for murder and a consecutive 49-month sentence for aggravated burglary. The Kansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Douglas, 274 Kan. 96, 103, 49 P.3d 446 (2002)
- State v. Jones, 257 Kan. 856, 871-72, 896 P.2d 1077 (1995)
- State v. Davis, 268 Kan. 661, 669, 679-81, 998 P.2d 1127 (2000)
- State v. Murillo, 269 Kan. 281, 286, 7 P.3d 264 (2000)
- State v. Bryant, 272 Kan. 1204, 1209-10, 38 P.3d 661 (2002)
- State v. Wakefield, 267 Kan. 116, 137-41, 977 P.2d 941 (1999)
- State v. Vontress, 266 Kan. 248, 260-64, 970 P.2d 42 (1998)
- State v. Thompkins, 263 Kan. 602, 609-10, 952 P.2d 1332 (1998)

- State v. Kingsley, 252 Kan. 761, 785-86, 851 P.2d 370 (1993), modified on other grounds by State v. Willis, 254 Kan. 119, 864 P.2d 1198 (1993)
- State v. Hartfield, 245 Kan. 431, 446-47, 781 P.2d 1050 (1989)
- State v. Wilson, 220 Kan. 341, 344-45, 552 P.2d 931 (1976), overruled on other grounds by State v. Quick, 226 Kan. 308, 317, 597 P.2d 1108 (1979)
- State v. Chism, 243 Kan. 484, 491-92, 759 P.2d 105 (1988)
- State v. Barncord, 240 Kan. 35, 37-38, 726 P.2d 1322 (1986)
- State v. McCowan, 226 Kan. 752, 759-61, 602 P.2d 1363 (1979)
- State v. Branning, 271 Kan. 877, 887, 26 P.3d 673 (2001)
- State v. Timley, 255 Kan. 286, 288-90, 875 P.2d 242 (1994)
- State v. Kleypas, 272 Kan. 894, 1035, 40 P.3d 139 (2001)
- State v. Peterson, 273 Kan. 217, 221, 42 P.3d 137 (2002)
- State v. Beach, 275 Kan. 603, Syl. ¶ 2, 67 P.3d 121 (2003)
- State v. Saleem, 267 Kan. 100, 104, 977 P.2d 921 (1999)
- State v. Jenkins, 272 Kan. 1366, 1378, 39 P.3d 47 (2002)
- State v. Nixon, 223 Kan. 788, 794, 576 P.2d 691 (1978)
- State v. Moore, 274 Kan. 639, 643, 55 P.3d 903 (2002)
- State v. Robbins, 272 Kan. 158, 168, 32 P.3d 171 (2001)
- State v. Saenz, 271 Kan. 339, 352, 22 P.3d 151 (2001)