

SUPREME COURT OF KANSAS

State v. Walker, 283 Kan. 587

153 P.3d 1257 (2007) · No. No. 95,095 · Decided March 23, 2007

SUMMARY

The Kansas Supreme Court affirmed Michael D. Walker’s convictions for first-degree felony murder and criminal discharge of a firearm at an occupied dwelling. The court held that Walker’s pre-counsel statement was voluntary and admissible, while evidence related to the vehicle was not subject to suppression as fruit of a Miranda violation because it was discoverable through independent or inevitable lawful investigation. The court also rejected Walker’s arguments concerning judicial reassignment, cumulative punishment, juvenile adjudications in criminal-history scoring, sentencing illegality, and judicial vindictiveness.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.
JURISDICTION	Kansas
DECIDED	March 23, 2007
DOCKET	No. 95,095
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from convictions and sentences entered after a retrial for first-degree felony murder and criminal discharge of a firearm at an occupied dwelling.
STANDARD OF REVIEW	Suppression findings are reviewed for substantial competent evidence without reweighing the evidence, while the legal conclusions drawn from those facts are reviewed de novo. Recusal and double-jeopardy issues are reviewed under the standards described in State v. Alderson and State v. Schoonover, respectively. The legality of a sentence is reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Kansas
PARTIES	Michael D. Walker v. State of Kansas

TOPICS

suppression of evidence

miranda rights

criminal procedure

double jeopardy

sentencing

PRACTICE AREAS

criminal procedure

constitutional law

evidence

sentencing

QUESTIONS PRESENTED

1. Whether Walker's pre-request confession was involuntary under the totality of the circumstances.
2. Whether evidence relating to the vehicle was inadmissible as fruit of statements obtained after Walker invoked his right to counsel.
3. Whether the trial judge was required to recuse himself or be replaced under K.S.A. 2006 Supp. 20-311d.
4. Whether cumulative convictions and sentences for felony murder and criminal discharge of a firearm at an occupied dwelling violated double jeopardy.
5. Whether use of Walker's juvenile adjudications in calculating his criminal-history score violated constitutional principles under Apprendi.
6. Whether Walker's 79-month sentence for criminal discharge of a firearm was illegal or demonstrated judicial vindictiveness after resentencing.

HOLDINGS

1. The admission made before Walker invoked his right to counsel was voluntary under the totality of the circumstances and was properly admitted.
2. The vehicle evidence was admissible because the prosecution proved by a preponderance of the evidence that it would have been discovered independently or inevitably through lawful investigation.
3. The denial of Walker's motion to change judge did not violate his right to a fair trial or due process because he failed to establish either a duty to recuse or actual bias or prejudice.
4. Cumulative convictions and sentences for felony murder and criminal discharge of a firearm at an occupied dwelling did not violate the Double Jeopardy Clauses because Kansas law authorized cumulative punishment for the two offenses.
5. Including Walker's prior juvenile adjudications in his criminal-history score did not violate his constitutional rights under Apprendi.
6. The 79-month sentence for criminal discharge of a firearm was legal, presumptive, and not the product of judicial vindictiveness.

KEY QUOTATIONS

"In determining whether a confession is voluntary, a court is to look at the totality of the circumstances."
(1266-1267)

"Evidence obtained unlawfully in violation of a defendant's constitutional rights is admissible under the inevitable discovery exception to the exclusionary rule where the prosecution can prove by a preponderance

of the evidence that the unlawfully obtained evidence would have ultimately or inevitably been discovered by lawful means.” (1270)

“The overarching inquiry is whether the convictions are for the same offense.” (1274)

FACTUAL BACKGROUND

Walker was implicated in a drive-by shooting directed at a rival gang member's home; one of the shots killed a 16-month-old child. During a lengthy police interrogation, Walker initially waived his Miranda rights and later admitted driving the vehicle used in the shooting, but subsequently requested to speak with a lawyer. Police continued questioning him, and the trial court admitted the pre-request admission while suppressing later statements. Independent investigation, including interviews and a narcotics-search-warrant investigation, led police to the maroon vehicle used in the shooting.

PROCEDURAL HISTORY

Walker was initially convicted of felony murder and criminal discharge of a firearm. The Kansas Supreme Court reversed those convictions because the trial court admitted statements made after Walker clearly invoked his Fifth Amendment right to counsel. On remand, Walker was retried, convicted again, and sentenced to life imprisonment for felony murder consecutive to 79 months for criminal discharge. The Supreme Court of Kansas rejected his challenges to suppression, judicial recusal, cumulative punishment, juvenile adjudications in criminal-history scoring, and resentencing, and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Walker, 276 Kan. 939, 80 P.3d 1132 (2003)
- State v. Lowe, 276 Kan. 957, 80 P.3d 1156 (2003)
- State v. Holmes, 278 Kan. 603, 622, 102 P.3d 406 (2004)
- State v. Rupnick, 280 Kan. 720, 727, 740, 125 P.3d 541 (2006)
- State v. Kirtdoll, 281 Kan. 1138, 1144, 136 P.3d 417 (2006)
- State v. Luna, 271 Kan. 573, 574-75, 24 P.3d 125 (2001)
- State v. Gonzalez, 282 Kan. 73, 103, 145 P.3d 18 (2006)
- Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964)
- State v. Ackward, 281 Kan. 2, 128 P.3d 382 (2006)
- State v. McCarther, 197 Kan. 279, 416 P.2d 290 (1966)
- Green v. State, 91 Md. App. 790, 605 A.2d 1001 (1992)
- State v. Newfield, 229 Kan. 347, 359, 623 P.2d 1349 (1981)
- State v. Tillery, 227 Kan. 342, 344, 606 P.2d 1031 (1980)
- State v. Combs, 280 Kan. 45, 51-52, 118 P.3d 1259 (2005)

- State v. Harris, 279 Kan. 163, 170, 105 P.3d 1258 (2005)
- State v. Wakefield, 267 Kan. 116, 128, 977 P.2d 941 (1999)
- State v. Swanigan, 279 Kan. 18, 106 P.3d 39 (2005)
- State v. Johnson, 253 Kan. 75, 84, 853 P.2d 34 (1993)
- State v. Harwick, 220 Kan. 572, 575-76, 552 P.2d 987 (1976)
- State v. Ninci, 262 Kan. 21, 39, 936 P.2d 1364 (1997)
- Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392, 40 S. Ct. 182, 64 L. Ed. 319 (1920)
- Wong Sun v. United States, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)
- State v. Waddell, 14 Kan. App. 2d 129, 784 P.2d 381 (1989)
- State v. Alderson, 260 Kan. 445, 922 P.2d 435 (1996)
- Hulme v. Woelzel, 208 Kan. 385, 392, 493 P.2d 541 (1972)
- State v. Goss, 245 Kan. 189, 198, 777 P.2d 781 (1989)
- State v. Logan, 236 Kan. 79, 86, 689 P.2d 778 (1984)
- State v. Reed, 282 Kan. 272, 277, 144 P.3d 677 (2006)
- State v. Foy, 227 Kan. 405, 411, 607 P.2d 481 (1980)
- Smith v. Printup, 262 Kan. 587, 608, 938 P.2d 1261 (1997)
- State v. Dubish, 234 Kan. 708, 718, 675 P.2d 877 (1984)
- State v. Schoonover, 281 Kan. 453, 133 P.3d 48 (2006)
- State v. Groves, 278 Kan. 302, 95 P.3d 95 (2004)
- Missouri v. Hunter, 459 U.S. 359, 368, 103 S. Ct. 673, 74 L. Ed. 2d 535 (1983)
- State v. Hitt, 273 Kan. 224, 234-36, 42 P.3d 732 (2002), cert. denied, 537 U.S. 1104 (2003)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- State v. Starks, 20 Kan. App. 2d 179, 885 P.2d 387 (1994)
- State v. Scales, 261 Kan. 734, 737, 933 P.2d 737 (1997)
- State v. Harper, 275 Kan. 888, 889, 69 P.3d 1105 (2003)
- North Carolina v. Pearce, 395 U.S. 711, 726, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)
- State v. Rinck, 260 Kan. 634, 637-45, 923 P.2d 67 (1996)