

SUPREME COURT OF KANSAS

State v. Robinson, 293 Kan. 1002

270 P.3d 1183 (2011) · Decided March 2, 2012

SUMMARY

The Kansas Supreme Court affirmed Elgin Ray Robinson’s convictions for capital murder, rape, aggravated kidnapping, aggravated indecent liberties with a child, and violation of a protection from abuse order, as well as his sentence of life imprisonment without parole plus 247 months. The court held that Robinson lacked an objectively reasonable expectation of privacy in Internet searches conducted on a third party’s workplace computer and upheld the admission of statements made during his custodial interview, finding no reversible error on the issues presented.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Moritz, J.
JURISDICTION	Kansas
DECIDED	March 2, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for capital murder, rape, aggravated kidnapping, aggravated indecent liberties with a child, and violation of a protection from abuse order, and from the resulting sentence of life imprisonment without parole plus 247 months.
STANDARD OF REVIEW	The court applied issue-specific standards: substantial competent evidence for factual findings and de novo review for legal conclusions on suppression; de novo review for statutory interpretation and constitutional evidentiary questions; abuse of discretion for ordinary hearsay and photographic-evidence rulings; de novo review for judicial-bias and identical-offense issues; and clear-error review for the unpreserved jury-instruction claim.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Elgin Ray Robinson, Jr. v. State of Kansas

TOPICS

criminal procedure

search and seizure

suppression of evidence

hearsay

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Robinson had a legitimate expectation of privacy in Internet-search activity conducted on a third party's employer-owned, networked computer.
2. Whether statements Robinson made during a custodial police interview were involuntary under the totality of the circumstances.
3. Whether C.B.'s nontestimonial hearsay statements were admissible under the forfeiture-by-wrongdoing exception or under K.S.A. 60-460(d)(3).
4. Whether the district court abused its discretion by admitting allegedly gruesome and repetitious photographs of C.B.'s body and grave.
5. Whether the trial judge was required to recuse because of alleged personal bias or the appearance of bias.
6. Whether the jury instruction stating that a person ordinarily intends the usual consequences of voluntary acts impermissibly shifted the State's burden of proving intent.
7. Whether the identical-offense doctrine required resentencing on Robinson's capital-murder conviction.

HOLDINGS

1. Robinson lacked an objectively reasonable expectation of privacy in Internet searches conducted on a third party's employer-owned, networked computer where the owner could monitor the activity, had informed Robinson that Internet use could be monitored, and the tracking files containing the searches were not password protected.
2. Robinson's statements during the nearly five-hour custodial interview were voluntary under the totality of the circumstances, and the district court properly denied suppression.
3. The district court used the wrong legal basis by admitting C.B.'s nontestimonial statements under the forfeiture-by-wrongdoing exception to the Confrontation Clause, but the statements were admissible under K.S.A. 60-460(d)(3), so the ruling was affirmed as correct for the wrong reason.
4. The district court did not abuse its discretion by admitting the challenged photographs because they were relevant to the manner and violent nature of the murder, corroborated witness testimony, and were not improperly cumulative merely because they were gruesome or caused emotional reactions.
5. The trial judge had no duty to recuse because Robinson's affidavit did not allege facts that would create a reasonable doubt about the judge's impartiality in the mind of a reasonable person with knowledge of all the circumstances.
6. The instruction that a person ordinarily intends the usual consequences of voluntary acts was not clearly erroneous because it expressly stated that the burden of proof never shifts to the defendant and created a permissible inference rather than a mandatory presumption.

7. The identical-offense doctrine did not require resentencing because aiding and abetting is not a separate offense and the elements of capital murder under K.S.A. 21-3439(a)(2) were not identical to the elements of first-degree murder committed under an aiding-and-abetting theory.

KEY QUOTATIONS

“Under these circumstances, Robinson lacked an objectively reasonable expectation of privacy in the Internet searches he conducted on Reisig’s computer.” (293 Kan. at 1016)

“Because the statements were nontestimonial and the Confrontation Clause was not implicated, the trial court erred in admitting the statements under the forfeiture by wrongdoing exception to the Confrontation Clause.” (293 Kan. at 1024)

“Because the challenged statements were all admissible under K.S.A. 60-460(d)(3), the district court did not err in denying Robinson’s motion to suppress C.B.’s statements, and we affirm the trial court’s decision as correct for the wrong reason.” (293 Kan. at 1027)

“These elements are not identical to the elements of the charged crime of capital murder based on a murder-for-hire theory.” (293 Kan. at 1038)

FACTUAL BACKGROUND

Fourteen-year-old C.B., who was nine months pregnant with Robinson's child, disappeared after leaving a skating rink with Robinson's friend Everett Gentry. Gentry testified that Robinson arranged for C.B. to be kidnapped and murdered because of the pregnancy and agreed to pay Gentry for the killing; Gentry and Theodore Burnett strangled C.B. and buried her in a shallow grave. The State also presented corroborating evidence, including text messages, cell-phone records, Internet searches on a computer used by Robinson, witness testimony, and photographs of the burial site and body.

PROCEDURAL HISTORY

A jury convicted Robinson of capital murder and related offenses. The jury could not unanimously agree on the death penalty, and the district court imposed life imprisonment without parole plus 247 months. Robinson appealed, challenging suppression rulings, hearsay and photographic evidence, judicial bias, the jury instructions on intent and burden of proof, and his capital-murder sentence.

DISPOSITION

affirmed

CASES CITED

- Herring v. United States, 555 U.S. 135, 139-46, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009)
- Wong Sun v. United States, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)
- State v. Morlock, 289 Kan. 980, 985, 218 P.3d 801 (2009)
- Rakas v. Illinois, 439 U.S. 128, 143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)

- State v. Fisher, 283 Kan. 272, 291-92, 154 P.3d 455 (2007)
- United States v. Angevine, 281 F.3d 1130, 1134 (10th Cir. 2002)
- State v. Stone, 291 Kan. 13, 21-33, 237 P.3d 1229 (2010)
- State v. Johnson, 286 Kan. 824, 836, 190 P.3d 207 (2008)
- State v. Swanigan, 279 Kan. 18, 33-46, 106 P.3d 39 (2005)
- Davis v. Washington, 547 U.S. 813, 821, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006)
- Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354, 158 L. Ed. 2d 1777 (2004)
- Giles v. California, 554 U.S. 353, 361-69, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (2008)
- State v. Jones, 287 Kan. 559, 567-69, 197 P.3d 815 (2008)
- State v. Vasquez, 287 Kan. 40, 58-59, 194 P.3d 563 (2008)
- State v. Bryant, 285 Kan. 970, 977-78, 179 P.3d 1122 (2008)
- State v. Riojas, 288 Kan. 379, 382-87, 204 P.3d 578 (2009)
- State v. Miller, 284 Kan. 682, 708, 163 P.3d 267 (2007)
- State v. Gonzalez, 282 Kan. 73, 80, 145 P.3d 18 (2006)
- State v. White, 279 Kan. 326, 332-33, 109 P.3d 1199 (2005)
- State v. Parker, 277 Kan. 838, 847, 89 P.3d 622 (2004)
- State v. Hernandez, 284 Kan. 74, 99, 159 P.3d 950 (2007), cert. denied, 552 U.S. 1025 (2007)
- State v. Baker, 287 Kan. 345, 363-66, 197 P.3d 421 (2008)
- State v. Woodward, 288 Kan. 297, 299, 202 P.3d 15 (2009)
- State v. Hall, 287 Kan. 139, 143, 195 P.3d 220 (2008)
- State v. Sappington, 285 Kan. 176, 190, 169 P.3d 1107 (2007)
- Davenport Pastures v. Board of Morris County Commissioners, 291 Kan. 132, 144-46, 238 P.3d 731 (2010)
- Withrow v. Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975)
- State ex rel. Stovall v. Meneley, 271 Kan. 355, 385, 22 P.3d 124 (2001)
- State v. Ellmaker, 289 Kan. 1132, 1138-39, 221 P.3d 1105 (2009), cert. denied, 130 S. Ct. 3410 (2010)
- State v. Martinez, 288 Kan. 443, 451-52, 204 P.3d 601 (2009)
- State v. Sandberg, 290 Kan. 980, 982-85, 235 P.3d 476 (2010)
- State v. Spangler, 38 Kan. App. 2d 817, 830, 173 P.3d 656 (2007)

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