

SUPREME COURT OF KANSAS

State v. Holmes, 272 Kan. 491

33 P.3d 856 (2001) · No. No. 84,360 · Decided November 9, 2001

SUMMARY

The Supreme Court of Kansas reversed Melvin W. Holmes's convictions for premeditated first-degree murder and criminal possession of a firearm and remanded for a new trial. The court held that the prosecutor misstated Kansas law by telling the jury that premeditation could occur in an instant, and that the trial court's failure to correct the misstatement deprived Holmes of a fair trial. The court did not reach the remaining claims because it set aside the murder verdict.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Lockett, J.; Allegrucci, J.
JURISDICTION	Kansas
DECIDED	November 9, 2001
DOCKET	No. 84,360
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Holmes appealed his convictions for premeditated first-degree murder and criminal possession of a firearm, and his hard 40 sentence, arguing in part that prosecutorial comments misstated Kansas law on premeditation and denied him a fair trial.
STANDARD OF REVIEW	The court reviewed the unobjected-to prosecutorial misstatement under Kansas's harmless-error statute, K.S.A. 60-261, and considered whether the misconduct violated Holmes's right to a fair trial and Fourteenth Amendment due process. Reversible error may be found without a contemporaneous objection when prosecutorial misconduct is inconsistent with substantial justice.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Melvin W. Holmes v. State of Kansas

TOPICS

- prosecutorial misconduct
- jury instructions
- due process
- fourteenth amendment
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the prosecutor's statements during closing argument that premeditation can occur in an instant or in a second misstated Kansas law and denied Holmes a fair trial and due process.
2. Whether the absence of a contemporaneous objection barred appellate relief for the alleged prosecutorial misconduct.

HOLDINGS

1. The prosecutor's statements that premeditation can occur in an instant or in a second improperly diminished the legal distinction between premeditated murder and lesser homicide offenses and misstated Kansas law.
2. A contemporaneous objection is not required when prosecutorial misconduct violates the defendant's right to a fair trial or Fourteenth Amendment right to due process; such misconduct constitutes reversible error under K.S.A. 60-261.

KEY QUOTATIONS

"Here, the prosecutor, after informing the judge as to the law, deliberately misstated the law to the jury, and the trial court's failure to act to correct the misstatement deprived Holmes of his right to a fair trial." (499-500)

"The unanimous Moncla court concluded that the addition of the phrase "it may arise in an instant" diminished the definition of premeditation." (499)

"the concept of "premeditation," as defined in PIK Crim.3d 56.04(b), is more than the instantaneous, intentional act of taking another's life." (500)

FACTUAL BACKGROUND

Holmes shot his girlfriend, Glenda Smith, during a drug-related argument and called 911 after leaving her body in the hallway and finishing his drugs. Holmes told police that Smith had possessed the gun during a struggle, that he eventually gained control of it, and that the gun discharged while he held it against her chest. At trial, Holmes claimed the shooting was accidental, and the timing between the shooting and his 911 call was disputed.

PROCEDURAL HISTORY

The district court denied Holmes's motion to suppress his statements, instructed the jury on premeditated first-degree murder and lesser included offenses, and entered convictions after the jury found him guilty. The court found aggravating circumstances and imposed a hard 40 sentence. The Supreme Court of Kansas reversed and remanded for a new trial because the prosecutor deliberately misstated the law of premeditation during closing argument and the trial court failed to correct the error.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment based on the guilty verdict for premeditated first-degree murder was set aside, and the case was remanded for a new trial.

CASES CITED

- State v. Moncla, 262 Kan. 58, 936 P.2d 727 (1997)
- State v. Lumley, 266 Kan. 939, 976 P.2d 486 (1999)
- State v. Gray, 25 Kan. App. 2d 83, 958 P.2d 37 (1998)
- State v. Buie, 223 Kan. 594, 575 P.2d 555 (1978)
- State v. Jamison, 269 Kan. 564, 7 P.3d 1204 (2000)

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