

SUPREME COURT OF KANSAS

State v. Messer, 278 Kan. 161

91 P.3d 1191 (2004) · No. No. 90,007 · Decided June 25, 2004

SUMMARY

The Supreme Court of Kansas affirmed Lloyd Neil Messer’s misdemeanor conviction for falsely impersonating a Kansas Bureau of Investigation agent under K.S.A. 21-3824. The court held that the statute is not unconstitutionally overbroad and does not require proof of an overt act beyond the false representation or a specific intent to deceive. The court also concluded that sufficient evidence supported the conviction.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.
JURISDICTION	Kansas
DECIDED	June 25, 2004
DOCKET	No. 90,007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Messer appealed his conviction for misdemeanor false impersonation of a Kansas Bureau of Investigation agent, challenging the constitutionality of K.S.A. 21-3824 and the sufficiency of the evidence.
STANDARD OF REVIEW	Statutory interpretation and constitutional validity were reviewed de novo. Sufficiency of the evidence was reviewed by asking whether, viewing all evidence in the light most favorable to the prosecution, a rational factfinder could have found the defendant guilty beyond a reasonable doubt. The appellate court would not reweigh witness credibility.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Lloyd Neil Messer v. State of Kansas

TOPICS

- overbreadth doctrine
- free speech
- statutory interpretation
- plain meaning rule
- appellate procedure

PRACTICE AREAS

criminal law

constitutional law

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether K.S.A. 21-3824 is unconstitutionally overbroad because it burdens protected free speech or should be construed to require an overt act or specific intent to deceive.
2. Whether sufficient evidence supported Messer's conviction for false impersonation.

HOLDINGS

1. K.S.A. 21-3824 is not unconstitutionally overbroad. The statute requires a knowing false representation that one is a public officer or employee, but it does not require proof of an overt act beyond the false representation or proof of a specific intent to deceive.
2. The evidence was sufficient for a rational factfinder to find Messer guilty beyond a reasonable doubt of false impersonation.

KEY QUOTATIONS

"The statute's plain language does not require proof of an overt act beyond the false representation itself, and it does not require proof of a specific intent to deceive." (164)

"There is no constitutionally protected act which is prohibited or curtailed [by the statute]. The statute is not constitutionally overbroad." (165)

FACTUAL BACKGROUND

Messer told his neighbor, Michael Kirch, that he was a "triple agent" with the Kansas Bureau of Investigation and claimed knowledge about Kirch's former wife, including her whereabouts and activities. Messer also described himself as a profiler and former bounty hunter, and stated that an antique mall where Kirch's former wife worked was under investigation. A KBI agent testified that Messer had never worked for the KBI, that the agency had no position called "triple agent," and that no such investigation existed. The district court credited Kirch's version of the conversation and convicted Messer.

PROCEDURAL HISTORY

The district court found Messer guilty after crediting the victim's account that Messer represented himself as a KBI agent. The Supreme Court of Kansas held that the constitutional argument was preserved, rejected the overbreadth challenge, and concluded that the evidence was sufficient to support the conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Conley, 270 Kan. 18, 30, 11 P.3d 1147 (2000), cert. denied, 532 U.S. 932 (2001)

- State v. Shears, 260 Kan. 823, 837, 925 P.2d 1136 (1996)
- State v. Moore, 269 Kan. 27, 30, 4 P.3d 1141 (2000)
- State v. Maass, 275 Kan. 328, 64 P.3d 382 (2003)
- State v. Seck, 274 Kan. 961, 964-965, 58 P.3d 730 (2002)
- State v. Sweat, 30 Kan. App. 2d 756, 760, 48 P.3d 8 (2002)
- State v. Crockett, 26 Kan. App. 2d 202, 205, 987 P.2d 1101 (1999)
- State v. Marino, 23 Kan. App. 2d 106, 929 P.2d 173 (1996)
- State v. Beach, 275 Kan. 603, Syl. ¶ 2, 67 P.3d 121 (2003)