

SUPREME COURT OF KANSAS

State v. Bernhardt

304 Kan. 460 (2016) · No. No. 111,639 · Decided May 27, 2016

SUMMARY

The Kansas Supreme Court affirmed Anson R. Bernhardt’s conviction for premeditated first-degree murder and his hard 50 sentence. The court held that the district court properly modified the pattern premeditation instruction, gave separate lesser-included instructions for intentional and reckless second-degree murder, and declined to instruct on voluntary manslaughter. It also upheld retroactive application of the 2013 hard 50 sentencing amendments and found sufficient evidence supporting the aggravating circumstance that the murder was especially heinous, atrocious, or cruel.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.; Johnson, J.; Luckert, J.
JURISDICTION	Kansas
DECIDED	May 27, 2016
DOCKET	No. 111,639
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bernhardt appealed his conviction for premeditated first-degree murder and his hard 50 sentence, challenging jury instructions, cumulative error, retroactive application of the amended hard 50 sentencing statute, and the sufficiency of the aggravating and mitigating circumstances.
STANDARD OF REVIEW	Jury-instruction claims are reviewed under a multistep framework involving reviewability and preservation, legal appropriateness, factual appropriateness, and harmless error. Statutory and constitutional questions are reviewed de novo. Sufficiency of evidence supporting an aggravating circumstance is reviewed by asking whether a rational factfinder could have found it beyond a reasonable doubt in the light most favorable to the prosecution; a rejected mitigating circumstance is reviewed in the light most favorable to the defendant to determine whether a rational factfinder could have found it by a preponderance of the evidence.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Anson R. Bernhardt v. State of Kansas

TOPICS

jury instructions lesser included offense instructions sentencing ex post facto criminal procedure

PRACTICE AREAS

criminal law criminal procedure appellate procedure sentencing

QUESTIONS PRESENTED

1. Whether the district court erred by modifying the Kansas pattern jury instruction defining premeditation.
2. Whether the district court erred by giving separate lesser-included-offense instructions for intentional second-degree murder and reckless second-degree murder.
3. Whether the district court erred by refusing to instruct the jury on voluntary manslaughter.
4. Whether the cumulative effect of the alleged instructional errors deprived Bernhardt of a fair trial.
5. Whether retroactive application of the 2013 amendments to Kansas's hard 50 sentencing statute violated the Ex Post Facto Clause.
6. Whether the evidence supported the hard 50 aggravating circumstance that the murder was especially heinous, atrocious, or cruel and whether the mitigating circumstances outweighed it.

HOLDINGS

1. The district court did not err by adding language to the pattern instruction explaining that premeditation need not exist before a fight, quarrel, or struggle and may form during a violent episode.
2. It is not error to give separate instructions for intentional and reckless second-degree murder when both are lesser included offenses of first-degree murder and the offenses are presented in order of severity, with reckless second-degree murder considered second.
3. The district court did not err by refusing to instruct on voluntary manslaughter because the evidence did not make the instruction factually appropriate.
4. The cumulative-error doctrine did not apply because the court identified no trial errors.
5. Applying the 2013 amendments to K.S.A. 21-6620 to Bernhardt did not violate the Ex Post Facto Clause.
6. The evidence was sufficient for a rational factfinder to find beyond a reasonable doubt that the murder was especially heinous, atrocious, or cruel and that the aggravating circumstance was not outweighed by the mitigating circumstances.

KEY QUOTATIONS

“The use of PIK instructions is not mandatory but is strongly recommended.” (304 Kan. at 470)

“Whether that separate consideration is prompted by a single instruction on one page or two successive instructions on two pages matters not, as long as the reckless crime, the one with the lesser severity rating, comes second.” (304 Kan. at 475)

“And, because the new statute did not alter the definition of criminal conduct or increase the penalty by which a crime is punishable, it cannot be said that ‘the [new] law changes the legal consequences of acts completed before its effective date.’” (304 Kan. at 481)

FACTUAL BACKGROUND

Bernhardt and Amber Kostner argued after leaving a bar. During the drive home, Kostner slapped Bernhardt; he stopped the car, pulled her out by her hair, and kicked her repeatedly, including in the head. He then transported her in the vehicle, placed her in the trunk after hearing her labored breathing, and abandoned her alive in a roadside ditch without seeking medical assistance. An autopsy attributed Kostner's death to multiple blunt-force injuries.

PROCEDURAL HISTORY

After a jury convicted Bernhardt of premeditated first-degree murder, the district court imposed a hard 50 sentence under the 2013 amendments to Kansas's hard 50 sentencing scheme. Bernhardt appealed directly to the Kansas Supreme Court. The Supreme Court rejected all instructional, ex post facto, and sentencing challenges and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- State v. Brownlee, 302 Kan. 491, 354 P.3d 525 (2015)
- State v. Dixon, 289 Kan. 46, 209 P.3d 675 (2009)
- State v. Horton, 300 Kan. 477, 331 P.3d 752 (2014)
- State v. Mitchell, 269 Kan. 349, 7 P.3d 1135 (2000)
- State v. Gunby, 282 Kan. 39, 144 P.3d 647 (2006)
- State v. Moncla, 262 Kan. 58, 936 P.2d 727 (1997)
- State v. Killings, 301 Kan. 214, 340 P.3d 1186 (2015)
- State v. Adams, 292 Kan. 60, 253 P.3d 5 (2011)
- State v. Trujillo, 225 Kan. 320, 590 P.2d 1027 (1979)
- State v. Cheever, 295 Kan. 229, 284 P.3d 1007 (2012)
- State v. Story, 300 Kan. 702, 334 P.3d 297 (2014)
- State v. Hayes, 299 Kan. 861, 327 P.3d 414 (2014)
- State v. Johnson, 290 Kan. 1038, 236 P.3d 517 (2010)
- State v. Hilt, 299 Kan. 176, 322 P.3d 367 (2014)

- State v. Northcutt, 290 Kan. 224, 224 P.3d 564 (2010)
- State v. Reed, 302 Kan. 390, 352 P.3d 1043 (2015)
- Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2151 (2013)
- State v. Soto, 299 Kan. 102, 322 P.3d 334 (2014)
- State v. Todd, 299 Kan. 263, 323 P.3d 829 (2014)
- State v. Prine, 297 Kan. 460, 303 P.3d 662 (2013)
- Dobbert v. Florida, 432 U.S. 282, 97 S. Ct. 2290 (1977)
- State v. DeAnda, 299 Kan. 594, 324 P.3d 1115 (2014)
- State v. Livingston, 272 Kan. 853, 35 P.3d 918 (2001)

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