

SUPREME COURT OF KANSAS

State v. Carter, 278 Kan. 74

91 P.3d 1162 (2004) · No. No. 88,933 · Decided June 25, 2004

SUMMARY

The Supreme Court of Kansas affirmed Jerome G. Carter's convictions for first-degree felony murder, aggravated robbery, and criminal possession of a firearm. The court held that prior eyewitness identifications were properly admitted because the witness was available for cross-examination, and it rejected claims of prosecutorial misconduct and insufficient evidence. The court also upheld the use of Carter's juvenile adjudications in calculating his criminal history score under Apprendi and State v. Hitt.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.
JURISDICTION	Kansas
DECIDED	June 25, 2004
DOCKET	No. 88,933
DISPOSITION	affirmed
PROCEDURAL POSTURE	Carter appealed convictions and sentences entered after his second criminal trial for first-degree felony murder, aggravated robbery, and criminal possession of a firearm.
STANDARD OF REVIEW	De novo review applied to whether the witness was available or unavailable and whether the Confrontation Clause was implicated when the underlying facts were undisputed. Prosecutorial-misconduct claims were reviewed under a two-step analysis addressing whether the remarks exceeded permissible latitude and, if so, whether they constituted reversible plain error. Sufficiency of the evidence was reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, a rational factfinder could have found guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Jerome G. Carter v. State of Kansas

TOPICS

criminal procedure

sixth amendment

hearsay

prosecutorial misconduct

sentencing

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the district court properly admitted portions of eyewitness Cavelle Horn's testimony, including prior identifications of Carter, from the preliminary hearing and first trial.
2. Whether the prosecutor committed reversible misconduct during closing argument by commenting on Horn's changed testimony and Smith's interpretation of Carter's statement.
3. Whether sufficient evidence supported Carter's convictions.
4. Whether considering Carter's juvenile adjudications in calculating his criminal-history score violated *Appendi v. New Jersey*.

HOLDINGS

1. The district court properly admitted portions of Horn's prior sworn testimony and identifications because Horn selectively remembered details, remained present and available for cross-examination at the second trial, and had an opportunity to explain or deny the prior statements.
2. The prosecutor did not commit reversible misconduct by arguing that Horn's changed testimony could be explained by his new family responsibilities or by repeating Smith's testimony about Carter's statement.
3. The evidence was sufficient to support Carter's convictions for first-degree felony murder, aggravated robbery, and criminal possession of a firearm.
4. Considering Carter's juvenile adjudications in calculating his criminal-history score did not violate *Appendi*.

KEY QUOTATIONS

"Moreover, as in Osby, 246 Kan. at 631, "extrinsic evidence of prior contradictory statements, whether oral or written, made by the witness," was admissible here as long as Horn was given an opportunity to explain." (278 Kan. at 80)

"Viewing the evidence introduced in Carter's second trial in the light most favorable to the prosecution, we have no trouble sustaining his convictions." (278 Kan. at 81)

"We decline his invitation to do so." (278 Kan. at 82)

FACTUAL BACKGROUND

Carter was alleged to have participated in an attempted robbery of three men, during which an armed intruder shot and killed Troy Hawkins. Investigative leads connected Carter to the crime, and police discovered the

murder weapon in the possession of Carter's girlfriend, Cassandra Smith. Smith testified that Carter admitted he had "dumped on somebody," and testing showed that Hawkins's DNA was on a yellow jacket Carter had worn on the night of the murder. At Carter's second trial, eyewitness Cavelle Horn remembered many details but no longer remembered identifying Carter in earlier proceedings.

PROCEDURAL HISTORY

Carter was originally convicted of first-degree premeditated murder, aggravated robbery, and criminal possession of a firearm. The Kansas Supreme Court reversed those convictions based on ineffective assistance of counsel in *State v. Carter*, 270 Kan. 426, 14 P.3d 1138 (2000). After a second trial, Carter was convicted of first-degree felony murder, aggravated robbery, and criminal possession of a firearm, and he appealed. The Supreme Court of Kansas affirmed.

DISPOSITION

affirmed

CASES CITED

- *State v. Carter*, 270 Kan. 426, 14 P.3d 1138 (2000)
- *State v. Meeks*, 277 Kan. 609, 88 P.3d 789 (2004)
- *State v. Bailey*, 263 Kan. 685, 952 P.2d 1289 (1998)
- *State v. Lomax & Williams*, 227 Kan. 651, 608 P.2d 959 (1980)
- *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004)
- *Ohio v. Roberts*, 448 U.S. 56, 100 S. Ct. 2531 (1980)
- *State v. Osby*, 246 Kan. 621, 793 P.2d 243 (1990)
- *State v. Hobson*, 234 Kan. 133, 671 P.2d 1365 (1983)
- *State v. Manning*, 270 Kan. 674, 19 P.3d 84 (2001)
- *State v. Heath*, 264 Kan. 557, 957 P.2d 449 (1998)
- *State v. Ly*, 277 Kan. 386, 85 P.3d 1200 (2004)
- *State v. Beach*, 275 Kan. 603, 67 P.3d 121 (2003)
- *State v. Hitt*, 273 Kan. 224, 42 P.3d 732 (2002), cert. denied, 537 U.S. 1104 (2003)
- *State v. Norton*, 277 Kan. 432, 85 P.3d 686 (2004)