

SUPREME COURT OF THE STATE OF KANSAS

State of Kansas v. Jeremy D. Levy

State v. Levy · No. No. 119,998 · Decided April 23, 2021

SUMMARY

The Kansas Supreme Court affirmed Jeremy D. Levy's conviction for first-degree felony murder arising from a shooting in which an occupied vehicle was struck and a bystander was killed. The court held that criminal discharge of a firearm at an occupied motor vehicle does not require an intent to target the vehicle itself, upheld the admission of gang-affiliation evidence, and concluded that a felony-murder instruction referring to the defendant or another as the killer did not broaden the charge. The court found no cumulative error.

CASE DETAILS

COURT	Supreme Court of the State of Kansas
WRITING FOR THE COURT	Justice Stegall; Senior Judge Michael E. Ward
JURISDICTION	Kansas
DECIDED	April 23, 2021
DOCKET	No. 119,998
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a jury conviction for first-degree felony murder and the resulting hard 25 sentence.
STANDARD OF REVIEW	For sufficiency of the evidence, whether, viewing all evidence in the light most favorable to the prosecution, a rational factfinder could have found guilt beyond a reasonable doubt; the court does not reweigh evidence, resolve conflicts, or assess witness credibility. Relevance materiality is reviewed de novo, probativeness for abuse of discretion, and the balancing of probative value against undue prejudice for abuse of discretion. Legal appropriateness of jury instructions is reviewed without deference; factual appropriateness requires sufficient supporting evidence. Because Levy did not object to the challenged instruction, reversibility was reviewed under the clear-error standard.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	Jeremy D. Levy v. State of Kansas

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that Levy committed the underlying felony of criminal discharge of a firearm at an occupied motor vehicle when he allegedly intended to shoot at Summers rather than at the vehicle.
2. Whether the district court properly admitted evidence concerning gang affiliation, gang rivalry, and gang activity.
3. Whether a felony-murder instruction stating that the defendant or another killed the victim impermissibly broadened the charge because the complaint alleged that Levy killed the victim.
4. Whether cumulative error deprived Levy of a fair trial.

HOLDINGS

1. The offense under K.S.A. 2020 Supp. 21-6308(a)(1)(B) does not require a specific intent to shoot at the motor vehicle rather than at another target. The evidence was legally sufficient even under Levy's theory that he intended to shoot Summers.
2. Gang-affiliation evidence is admissible when relevant and supported by sufficient evidence that gang membership or activity is related to the charged crime. The district court did not abuse its discretion by admitting the evidence and giving a limiting instruction.
3. A felony-murder instruction stating that the defendant or another killed the victim does not improperly broaden the charge, even when the charging document states that the defendant killed the victim.
4. Cumulative error did not warrant relief because the court found no individual errors to accumulate.

KEY QUOTATIONS

“In Kansas, the crime of criminal discharge does not require a specific intent to shoot “at a motor vehicle” as opposed to at some other target—whether that target is inside the vehicle, hiding behind the vehicle, or only nearby the vehicle.” (5-6)

“Putting all this together, a person has committed the crime of criminal discharge under K.S.A. 2020 Supp. 21-6308(a)(1)(B) if: (1) that person recklessly and without authorization discharges a firearm; (2) that discharge was “at a motor vehicle” independent of the shooter's intended target; and (3) a person was inside the vehicle.” (6)

“The evidence may only be used to show motive, part of the events surrounding the commission of the crime, the relationship of the parties, identification and witness bias. This evidence shall not be considered for any other purpose.” (11)

FACTUAL BACKGROUND

Erick Vazquez was shot and killed while seated in his Nissan truck during a gun battle in a Wichita strip-mall parking lot. The State's theory was that Levy, a member of the Folk Gangster Disciples, and KeAndre Summers, a member of the Piru Bloods, exchanged gunfire and that Vazquez was an innocent bystander. The State presented eyewitness and gang-affiliation evidence but no recovered firearm definitively identifying the shooter who fired the fatal shot.

PROCEDURAL HISTORY

Levy was charged in the Sedgwick District Court with first-degree felony murder based on criminal discharge of a firearm at an occupied motor vehicle. A jury convicted him, and the district court imposed a hard 25 sentence. Levy directly appealed, challenging the sufficiency of the evidence, admission of gang-affiliation evidence, the felony-murder jury instruction, and cumulative error.

DISPOSITION

affirmed

CASES CITED

- State v. Chandler, 307 Kan. 657, 414 P.3d 713 (2018)
- State v. Potts, 304 Kan. 687, 374 P.3d 639 (2016)
- State v. Farmer, 285 Kan. 541, 175 P.3d 221 (2008)
- State v. Shadden, 290 Kan. 803, 235 P.3d 436 (2010)
- Nauheim v. City of Topeka, 309 Kan. 145, 432 P.3d 647 (2019)
- State v. Lowery, 308 Kan. 1183, 427 P.3d 865 (2018)
- State v. Miller, 308 Kan. 1119, 427 P.3d 907 (2018)
- State v. Ingham, 308 Kan. 1466, 430 P.3d 931 (2018)
- State v. Peppers, 294 Kan. 377, 276 P.3d 148 (2012)
- State v. Dean, 310 Kan. 848, 450 P.3d 819 (2019)
- State v. Conway, 284 Kan. 37, 159 P.3d 917 (2007)
- State v. McLinn, 307 Kan. 307, 409 P.3d 1 (2018)
- State v. Johnson, 304 Kan. 924, 376 P.3d 70 (2016)
- State v. Williams, 303 Kan. 585, 363 P.3d 1101 (2015)
- State v. Dobbs, 297 Kan. 1225, 308 P.3d 1258 (2013)
- State v. Robinson, 308 Kan. 402, 421 P.3d 713 (2018)
- State v. Marshall, 303 Kan. 438, 362 P.3d 587 (2015)
- State v. Blansett, 309 Kan. 401, 435 P.3d 1136 (2019)