

SUPREME COURT OF KANSAS

State v. Burnett

300 Kan. 419 (2014) · Decided July 25, 2014

SUMMARY

The Kansas Supreme Court affirmed Ronnell Burnett’s convictions for felony murder, criminal discharge of a firearm at an occupied dwelling, and criminal possession of a firearm. The court held that the trial court erred by excluding evidence of other shootings at the residence for purposes of cross-examining crime-scene investigators, but found the error harmless. It rejected Burnett’s remaining claims, including challenges concerning a continuance, jury instructions, jail letters, limiting instructions, substitute counsel, ineffective assistance, and cumulative error.

CASE DETAILS

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| COURT                 | Supreme Court of Kansas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Rosen, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | Kansas                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | July 25, 2014                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Burnett appealed his convictions for felony murder, criminal discharge of a firearm at an occupied dwelling, and criminal possession of a firearm following a second jury trial and sentencing. He challenged evidentiary rulings, denial of a trial continuance, the felony-murder instruction, admission of jail letters, failure to give a limiting instruction, denial of substitute counsel, denial of a new trial based on ineffective assistance, and cumulative error.                                                                                                                                                                                                               |
| STANDARD OF REVIEW    | The standard varied by issue. Relevance materiality was reviewed de novo and probative value for abuse of discretion; evidentiary exclusion was also subject to harmless-error review. Denial of a continuance and substitute counsel was reviewed for abuse of discretion. Suppression factual findings were reviewed for substantial competent evidence and the ultimate legal conclusion de novo. Jury-instruction claims not preserved by objection were reviewed for clear error. Ineffective-assistance claims presented mixed questions, with factual findings reviewed for substantial competent evidence and legal conclusions de novo. Cumulative error was reviewed under whether |

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|                           | the totality of circumstances substantially prejudiced the defendant and denied him a fair trial. |
| <b>PRECEDENTIAL VALUE</b> | Published, precedential opinion of the Supreme Court of Kansas.                                   |
| <b>PARTIES</b>            | Ronnell Burnett v. State of Kansas                                                                |

## TOPICS

criminal procedure evidence fourth amendment suppression of evidence ineffective assistance

## PRACTICE AREAS

criminal law criminal procedure evidence constitutional law appellate practice

## QUESTIONS PRESENTED

1. Whether the district court improperly excluded evidence of prior and subsequent shootings at the residence to support a third-party defense.
2. Whether the district court improperly excluded evidence of other bullet holes for cross-examination of crime-scene investigators.
3. Whether the district court abused its discretion by denying a continuance to prepare a redacted video of Burnett's police interview.
4. Whether the felony-murder instruction improperly submitted alternative means of committing felony murder.
5. Whether admission of copies of Burnett's outgoing jail letters violated the Fourth Amendment.
6. Whether the district court clearly erred by failing to give a limiting instruction concerning other-crimes or civil-wrongs evidence.
7. Whether the district court abused its discretion by denying Burnett's request for substitute counsel without further inquiry.
8. Whether Burnett established ineffective assistance of trial counsel.
9. Whether cumulative error denied Burnett a fair trial.

## HOLDINGS

1. Evidence that the residence had been the target of other shootings was properly excluded to establish that an unidentified third party committed the charged shooting because Burnett did not connect any specific third party, the prior or subsequent shootings, or the same weapon to the July 7 shooting.
2. The district court erred by preventing Burnett from questioning crime-scene investigators about other gunshot holes at the residence because that evidence could have challenged the State's theory that the charged shooting consisted of six shots fired by a lone gunman from the street.
3. The error in excluding the other bullet-hole evidence was harmless because there was no reasonable probability that allowing the cross-examination would have changed the outcome in light of the strong

circumstantial evidence identifying Burnett as the shooter.

4. The district court did not abuse its discretion by denying Burnett's request for a continuance because he failed to show good cause or identify how the video would have impeached Detective Block or otherwise bolstered his defense.
5. The phrase in the felony-murder statute referring to killing during the commission, attempted commission, or flight from an inherently dangerous felony does not create alternative means of committing felony murder.
6. The district court properly denied suppression of copies of Burnett's outgoing jail letters because Burnett had no reasonable expectation of privacy in nonprivileged mail subject to jail monitoring, and jail personnel could provide the contents they lawfully observed to prosecutors.
7. Even assuming the district court erred by failing to give a limiting instruction regarding evidence of other crimes or civil wrongs, the omission was not clearly erroneous because the court was not firmly convinced that the jury would have reached a different verdict.
8. The district court did not abuse its discretion in denying substitute counsel because Burnett's complaints did not establish a conflict of interest, irreconcilable disagreement, or complete breakdown in communication requiring further inquiry.
9. Burnett failed to establish ineffective assistance of counsel because he did not show deficient performance and prejudice arising from the timing of the investigator's retention, failure to call Frosty Treats witnesses, absence of a phone log, or absence of an interview transcript.
10. The cumulative effect of the trial errors did not deny Burnett a fair trial or warrant reversal because the errors were unrelated and, in light of the entire record, did not create a reasonable probability that the outcome was affected.

#### KEY QUOTATIONS

*"In other words, without additional evidence showing that a third party could have committed the crime (e.g., presence at the crime scene, the opportunity and means to commit the crime), evidence merely suggesting that someone other than the defendant had a motive to commit the crime has little probative value and can be properly excluded at trial."* (at 432)

*"We agree with Burnett's argument that questioning the investigators about these other gunshot holes could have impugned the State's theory that the July 7 shooting resulted from a lone gunman standing in the street and firing his weapon at the front of Ramsey's house."* (at 434)

*"The felony-murder statute has two primary elements—killing and simultaneously engaging in an inherently dangerous felony. The second element can be established through proof that the killing occurred while the defendant was committing, attempting to commit, or fleeing from an inherently dangerous felony. These are simply factual circumstances in which a material element may be proven."* (at 439-440)

*"To warrant substitute counsel, a defendant must show "justifiable dissatisfaction" with his or her appointed counsel."* (at 449)

#### FACTUAL BACKGROUND

After an escalating dispute involving Burnett, Tyrone Ramsey, and Simone Dickson, Ramsey vandalized Burnett's work truck at Dickson's mother's residence. Later that night, multiple shots were fired into Ramsey's residence, killing Rahi Larks. Evidence linked Burnett to the shooting through his threats to Ramsey, possession of a firearm, his movements that night, Dickson's testimony that Burnett admitted shooting at the residence, and letters Burnett sent Dickson asking her to testify falsely. The firearm was never recovered, but shell casings and bullets were linked to a .40-caliber semiautomatic handgun.

## PROCEDURAL HISTORY

Burnett's first jury trial ended in a mistrial because the jury could not reach a verdict. After a second trial, the jury found him guilty on all charged offenses. The district court sentenced him to a hard 20 life sentence for felony murder and consecutive terms of 59 months and 8 months for the firearm-discharge and firearm-possession convictions, respectively, denied his motion for a new trial, and Burnett timely appealed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Ultreras, 296 Kan. 828, 857, 295 P.3d 1020 (2013)
- State v. Reid, 286 Kan. 494, 505, 186 P.3d 713 (2008)
- State v. Evans, 275 Kan. 95, 99, 62 P.3d 220 (2003)
- State v. Brown, 285 Kan. 261, Syl. ¶¶ 26-27, 173 P.3d 612 (2007)
- State v. Inkelaar, 293 Kan. 414, 438, 441, 264 P.3d 81 (2011)
- State v. Marsh, 278 Kan. 520, 531, 533, 102 P.3d 445 (2004), rev'd on other grounds by Kansas v. Marsh, 548 U.S. 163, 126 S. Ct. 2516, 165 L. Ed. 2d 429 (2006)
- State v. Adams, 280 Kan. 494, 505-507, 124 P.3d 19 (2005)
- State v. Ward, 292 Kan. 541, Syl. ¶ 6, 256 P.3d 801 (2011)
- State v. Beaman, 295 Kan. 853, 862, 864, 286 P.3d 876 (2012)
- State v. Warrior, 294 Kan. 484, 505, 277 P.3d 1111 (2012)
- State v. Wright, 290 Kan. 194, 203-206, 224 P.3d 1159 (2010)
- State v. Cheffen, 297 Kan. 689, 699-702, 303 P.3d 1261 (2013)
- State v. Brooks, 298 Kan. 672, 317 P.3d 54 (2014)
- State v. Ransom, 288 Kan. 697, Syl. ¶ 1, 207 P.3d 208 (2009)
- State v. Daniel, 291 Kan. 490, 496, 242 P.3d 1186 (2010)
- Arizona v. Gant, 556 U.S. 332, 338, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009)
- Smith v. Maryland, 442 U.S. 735, 740, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979)
- Illinois v. Caballes, 543 U.S. 405, 408, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)
- Stroud v. United States, 251 U.S. 15, 21-22, 40 S. Ct. 50, 64 L. Ed. 103 (1919)
- United States v. Whalen, 940 F.2d 1027, 1034-1035 (7th Cir. 1991)

- United States v. Brown, 878 F.2d 222, 225 (8th Cir. 1989)
- State v. Matthews, 217 Kan. 654, 657-658, 538 P.2d 637 (1975)
- State v. Jeffers, 135 Ariz. 404, 661 P.2d 1105 (1983)
- State v. McCoy, 270 Or. 340, 347, 527 P.2d 725 (1974)
- State v. Herbel, 296 Kan. 1101, Syl. ¶¶ 7-8, 299 P.3d 292 (2013)
- State v. Williams, 295 Kan. 506, 511-516, 286 P.3d 195 (2012)
- State v. Breeden, 297 Kan. 567, 582, 304 P.3d 660 (2013)
- State v. Sappington, 285 Kan. 158, Syl. ¶ 4, 169 P.3d 1096 (2007)
- State v. Bryant, 285 Kan. 970, 986-987, 179 P.3d 1122 (2008)
- State v. Hegwood, 256 Kan. 901, 903, 888 P.2d 856 (1995)
- State v. Ferguson, 254 Kan. 62, 70, 864 P.2d 693 (1993)
- State v. Jasper, 269 Kan. 649, 654-655, 8 P.3d 708 (2000)
- State v. Richardson, 256 Kan. 69, 81-82, 883 P.2d 1107 (1994)
- State v. Hulett, 293 Kan. 312, 318, 263 P.3d 153 (2011)
- State v. White, 284 Kan. 333, 342, 161 P.3d 208 (2007)
- State v. Cheatham, 296 Kan. 417, 430-431, 292 P.3d 318 (2013)
- Harris v. State, 288 Kan. 414, 416, 204 P.3d 557 (2009)
- Thompson v. State, 293 Kan. 704, 721, 270 P.3d 1089 (2011)