

SUPREME COURT OF KANSAS

State v. Drayton, 285 Kan. 689

175 P.3d 861 (2008) · No. No. 95,672 · Decided February 1, 2008

SUMMARY

The Kansas Supreme Court affirmed Paul Drayton’s convictions for first-degree murder and felony theft. The court held that the admission of testimony concerning Drayton’s interview, including improper opinion testimony regarding his credibility or guilt, did not require reversal because any error was harmless. The court reversed the assessment of \$7,110 in attorney fees because the district court essentially found that Drayton lacked the financial ability to pay.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Nuss, J.; McAnany, J., assigned
JURISDICTION	Kansas
DECIDED	February 1, 2008
DOCKET	No. 95,672
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Drayton directly appealed his convictions for first-degree murder and felony theft to the Supreme Court of Kansas. He challenged evidentiary rulings, alleged prosecutorial misconduct based on use of his post-Miranda silence, the sufficiency of the theft evidence, and the assessment of attorney fees for reimbursement of appointed-counsel costs.
STANDARD OF REVIEW	Preservation issues were governed by the contemporaneous-objection and motion-in-limine rules. Legal questions concerning evidentiary admissibility and statutory interpretation were reviewed de novo or without deference. Sufficiency of the evidence was reviewed by viewing all evidence in the light most favorable to the prosecution and asking whether a rational factfinder could find guilt beyond a reasonable doubt. Prosecutorial-misconduct claims were reviewed under a two-step analysis addressing whether the conduct exceeded the prosecutor's latitude and, if so, whether it constituted reversible plain error. Harmlessness was evaluated under K.S.A. 60-261 and, for the constitutional Doyle error, Chapman v. California.

PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Kansas
PARTIES	Paul D. Drayton v. State of Kansas

TOPICS

criminal procedure evidence prosecutorial misconduct appellate procedure remedies

PRACTICE AREAS

criminal law criminal procedure evidence appellate procedure indigent defense reimbursement

QUESTIONS PRESENTED

1. Whether the State violated a motion in limine by introducing testimony suggesting that Drayton was incarcerated when detectives interviewed him.
2. Whether the district court committed reversible error by admitting a detective's opinion that an innocent person would have responded differently during police questioning.
3. Whether the prosecutor committed reversible misconduct by eliciting testimony concerning Drayton's post-Miranda invocation of his right to silence and by using that invocation to impeach him in closing argument.
4. Whether the evidence was sufficient to support the theft conviction when the State could not establish that Mayberry was alive when the van was taken.
5. Whether the district court erred by assessing BIDS attorney fees when it found that Drayton was unlikely to have the financial ability to pay.

HOLDINGS

1. The issue was not preserved because Drayton failed to object when the challenged testimony was introduced. Even if preserved, the testimony did not violate the motion in limine and caused no substantial prejudice.
2. Testimony by a police detective that an innocent or uninvolved person would have responded differently during questioning is inadmissible as a matter of law because it impermissibly expresses an opinion on the defendant's credibility or guilt. The error was harmless beyond a reasonable doubt.
3. The State violated *Doyle v. Ohio* by eliciting testimony twice concerning Drayton's post-Miranda invocation of his right to silence. The prosecutor's closing argument, however, did not violate *Doyle* because it addressed Drayton's inconsistent statements rather than his invocation of silence. The *Doyle* error was harmless and did not require reversal.
4. The evidence was sufficient to support the theft conviction even though the jury could have found that Mayberry was dead when the van was taken.
5. A sentencing court must explicitly consider the defendant's financial resources and the burden of payment when determining the amount and method of BIDS reimbursement. A defendant who is unlikely to be able to pay may not be ordered to pay counsel expenses. Because the district court found

that Drayton was unlikely to have the ability to pay but assessed the full \$7,110 without meaningful consideration, the attorney-fee assessment was reversed.

KEY QUOTATIONS

“Asking for a witness' opinion on another witness' credibility, even if done indirectly, as here, is still improper.” (175 P.3d at 871-72)

“That opinion testimony is inadmissible as a matter of law.” (175 P.3d at 872)

“It is constitutionally impermissible for the State to elicit evidence at trial of an accused's post-Miranda silence.” (175 P.3d at 875)

“The language is mandatory; the legislature stated unequivocally that this 'shall' occur.” (175 P.3d at 880)

“Accordingly, the mandatory language requiring the district court's initial consideration at the time of sentencing must take priority over any subsequent rights or remedies available under the statute, to the attorney general or the defendant.” (175 P.3d at 881)

FACTUAL BACKGROUND

Paul Drayton visited James Mayberry in Wichita shortly after being released from a detention facility. Mayberry was later found nude and dead from multiple stab wounds, and a bag discarded nearby contained bloody knives, towels, a used condom, and Mayberry's wallet; Mayberry's van was also found nearby. DNA from the condom matched both Mayberry and Drayton, and Drayton gave detectives accounts that conflicted with his later trial testimony concerning his visit, sexual contact with Mayberry, the van, and his departure from Wichita. The district court also found that Drayton was unlikely to have the ability to pay the \$7,110 assessed for BIDS attorney fees.

PROCEDURAL HISTORY

A jury convicted Drayton of first-degree murder and felony theft. The district court sentenced him to life imprisonment without parole for 25 years for murder and seven months for theft, consecutively, and assessed \$7,110 in BIDS attorney fees. The Supreme Court of Kansas affirmed the convictions but reversed the attorney-fee assessment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The convictions are affirmed. The district court's order assessing \$7,110 in attorney fees for reimbursement of BIDS fees is reversed; the fee assessment must be reconsidered consistent with the requirement to account explicitly for Drayton's financial resources and the burden of payment.

CASES CITED

- State v. Decker, 275 Kan. 502, 507, 66 P.3d 915 (2003)
- State v. Gleason, 277 Kan. 624, 640, 88 P.3d 218 (2004)
- State v. Voyles, 284 Kan. 239, 252, 160 P.3d 794 (2007)
- State v. Gunby, 282 Kan. 39, Syl. ¶ 2, 144 P.3d 647 (2006)
- State v. Johnson, 258 Kan. 475, 481, 905 P.2d 94 (1995)
- State v. Fisher, 283 Kan. 272, 311, 154 P.3d 455 (2007)
- State v. Jackson, 239 Kan. 463, 470, 721 P.2d 232 (1986)
- State v. Plaskett, 271 Kan. 995, 1008-09, 27 P.3d 890 (2001)
- State v. Manning, 270 Kan. 674, 698, 19 P.3d 84 (2001)
- State v. Lash, 237 Kan. 384, 386, 699 P.2d 49 (1985)
- State v. Mullins, 267 Kan. 84, 93, 97, 977 P.2d 931 (1999)
- State v. Steadman, 253 Kan. 297, 300, 303-04, 855 P.2d 919 (1993)
- State v. Elnicki, 279 Kan. 47, 53-54, 58, 65, 105 P.3d 1222 (2005)
- State v. Engelhardt, 280 Kan. 113, 130, 119 P.3d 1148 (2005)
- State v. Fisher, 222 Kan. 76, Syl. ¶ 7, 563 P.2d 1012 (1977)
- State v. Swinney, 280 Kan. 768, 779, 127 P.3d 261 (2006)
- State v. Hernandez, 284 Kan. 74, 79, 94, 159 P.3d 950 (2007)
- State v. Sanchez, 282 Kan. 307, 311, 144 P.3d 718 (2006)
- State v. White, 284 Kan. 333, 337-38, 161 P.3d 208 (2007)
- State v. Tosh, 278 Kan. 83, 85, 91 P.3d 1204 (2004)
- State v. Edwards, 264 Kan. 177, 195-96, 955 P.2d 1276 (1998)
- State v. Clark, 223 Kan. 83, Syl. § 2, 574 P.2d 174 (1977)
- State v. Falke, 237 Kan. 668, 682, 703 P.2d 1362 (1985)
- State v. Gibson, 246 Kan. 298, 303, 787 P.2d 1176 (1990)
- State v. Burhans, 277 Kan. 858, 871, 89 P.3d 629 (2004)
- State v. Ordway, 261 Kan. 776, 804, 934 P.2d 94 (1997)
- State v. Bird, 240 Kan. 288, 299, 729 P.2d 1136 (1986)
- State v. Myers, 230 Kan. 697, 703-04, 640 P.2d 1245 (1982)
- State v. Adam, 257 Kan. 693, 698, 896 P.2d 1022 (1995)
- State v. Holt, 260 Kan. 33, 42, 917 P.2d 1332 (1996)
- State v. Robinson, 281 Kan. 538, 543-47, 132 P.3d 934 (2006)
- Olson v. James, 603 F.2d 150, 155 (10th Cir. 1979)
- Fuller v. Oregon, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974)
- Arthur v. State, 735 So. 2d 213, 219-20 (Miss. 1999)
- Metheny v. State, 359 Md. 576, 606, 755 A.2d 1088 (2000)