

SUPREME COURT OF KANSAS

State v. Dobbs

297 Kan. 1225 (2013) · Decided September 20, 2013

SUMMARY

The Kansas Supreme Court affirmed Donnell Dobbs’ convictions for first-degree premeditated murder, attempted first-degree premeditated murder, and criminal possession of a firearm. The court held that the district court properly granted the State a continuance under K.S.A. 22-3402(5)(c), so Dobbs’ statutory speedy-trial right was not violated. The court also held that although the eyewitness-identification instruction improperly included the degree-of-certainty factor, the error was not clearly reversible in light of the trial record and procedural safeguards.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Moritz, J.
JURISDICTION	Kansas
DECIDED	September 20, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dobbs directly appealed his convictions for first-degree premeditated murder, attempted first-degree premeditated murder, and criminal possession of a firearm. He challenged the grant of a continuance under Kansas's statutory speedy-trial statute and the giving of an eyewitness-identification jury instruction.
STANDARD OF REVIEW	The grant of a continuance under K.S.A. 22-3402(5) is reviewed for abuse of discretion. An unobjected-to jury-instruction claim is reviewed under the clear-error rule: the appellate court first determines de novo whether the instruction was legally erroneous, then determines whether it is firmly convinced the jury would have reached a different verdict absent the error.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Donnell Dobbs v. State of Kansas

TOPICS

- speedy trial
- jury instructions
- harmless error
- standard of review
- criminal procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the district court abused its discretion under K.S.A. 22-3402(5)(c) by granting the State a continuance to obtain forensic-testing reports, thereby violating Dobbs's statutory speedy-trial right under K.S.A. 22-3402(1).
2. Whether the district court committed clear error by giving an eyewitness-identification instruction that directed the jury to consider the witness's degree of certainty, and whether that error required reversal.

HOLDINGS

1. The district court did not abuse its discretion in granting the continuance. Evidence is material for purposes of K.S.A. 22-3402(5)(c) when it may have a legitimate and effective bearing on the case, including when it has the potential to inculcate or exculpate the defendant; the State need not establish a definitive connection between the defendant or victim and the evidence before obtaining the continuance. The 83-day continuance therefore was excluded from the 90-day speedy-trial calculation, and Dobbs was not entitled to discharge.
2. The district court erred by instructing the jury to consider the eyewitness's degree of certainty because that factor had been disapproved in *State v. Mitchell*.
3. The instructional error did not constitute clear error requiring reversal. Although Mitchell's identification was crucial and the record contained testimony expressing certainty, procedural safeguards—including cross-examination, closing arguments addressing credibility and identification flaws, the burden of proof, and corroborating evidence—sufficiently counteracted the erroneous instruction.

KEY QUOTATIONS

“evidence is “material” for purposes of K.S.A. 22-3402(5)(c) when the evidence may have a legitimate and effective bearing on the decision of the case, i.e., when the evidence has the potential to inculcate or exculpate the defendant.” (297 Kan. at 1236)

“the instruction, as written, “prompts the jury to conclude that an eyewitness identification is more reliable when the witness expresses greater certainty, which places undue weight on eyewitness certainty evidence”” (297 Kan. at 1238)

“We conclude under these circumstances that there is no reasonable possibility the jury would have rendered a different verdict absent the error; thus, reversal is not required.” (297 Kan. at 1241)

FACTUAL BACKGROUND

Donnell Dobbs entered TJ's Barbershop with an assault rifle and opened fire, killing Muryel Josenberger and severely wounding Mario Mitchell. Mitchell initially told police he did not know who shot him, but twelve days later identified Dobbs as the gunman and identified Casey Ellis as the getaway-car driver. Other witnesses described a masked gunman and a gray or silver Monte Carlo leaving the scene, and the vehicle was connected

to Dobbs's brother. No physical evidence directly linked Dobbs to the crime scene, but the State relied principally on Mitchell's identification and corroborating testimony about the shooting and getaway vehicle.

PROCEDURAL HISTORY

Dobbs and Casey Ellis were jointly charged after a shooting at a Kansas City, Kansas, barbershop. Following a joint trial, the jury acquitted Ellis but convicted Dobbs of all charged offenses. The district court denied Dobbs's motion for a new trial and imposed life imprisonment without parole for 25 years for murder plus a consecutive controlling sentence of 155 months for the remaining convictions. The Kansas Supreme Court affirmed on direct appeal.

DISPOSITION

affirmed

CASES CITED

- State v. Beaman, 295 Kan. 853, 286 P.3d 876 (2012)
- State v. Cook, 281 Kan. 961, 135 P.3d 1147 (2006)
- State v. Ward, 292 Kan. 541, 256 P.3d 801 (2011)
- State v. McCullough, 293 Kan. 970, 270 P.3d 1142 (2012)
- State v. Breedlove, 295 Kan. 481, 286 P.3d 1123 (2012)
- State v. Edwards, 291 Kan. 532, 243 P.3d 683 (2010)
- State v. Hines, 269 Kan. 698, 7 P.3d 1237 (2000)
- Smith v. Deppish, 248 Kan. 217, 807 P.2d 144 (1991)
- State v. Brown, 266 Kan. 563, 973 P.2d 773 (1999)
- State v. Jackson, 280 Kan. 16, 118 P.3d 1238 (2005)
- State v. Garcia, 285 Kan. 1, 169 P.3d 1069 (2007)
- State v. Preston, 294 Kan. 27, 272 P.3d 1275 (2012)
- State v. Hunt, 275 Kan. 811, 69 P.3d 571 (2003)
- State v. Trammel, 278 Kan. 265, 92 P.3d 1101 (2004)
- State v. Marshall, 294 Kan. 850, 281 P.3d 1112 (2012)
- State v. Mitchell, 294 Kan. 469, 275 P.3d 905 (2012)
- State v. Williams, 295 Kan. 506, 286 P.3d 195 (2012)
- Perry v. New Hampshire, 565 U.S. 228, 132 S. Ct. 716, 181 L. Ed. 2d 694 (2012)

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