

SUPREME COURT OF KANSAS

State v. Tolson, 274 Kan. 558

56 P.3d 279 (2002) · No. No. 85,222 · Decided October 25, 2002

SUMMARY

The Supreme Court of Kansas considers Arlando Tolson’s appeal from a felony-murder conviction arising from the shooting death of Austin Garza during a marijuana transaction. The court addresses the admissibility of prior-crimes evidence under K.S.A. 60-455 and the legality of a warrantless protective sweep followed by a search pursuant to warrant. The opinion analyzes the relevance and prejudicial effect of the prior acts and the exigent circumstances supporting the police entry.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Allegretti, J.; Larson, S.J., assigned
JURISDICTION	Kansas
DECIDED	October 25, 2002
DOCKET	No. 85,222
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tolson was convicted by a jury of felony murder and appealed, challenging the admission of prior-acts evidence under K.S.A. 60-455 and the denial of his motion to suppress evidence seized after a search warrant was issued for his residence.
STANDARD OF REVIEW	Admission of prior-crimes evidence under K.S.A. 60-455 is reviewed for abuse of discretion after determining that the statutory requirements for admissibility are satisfied. The warrantless-entry issue turns on whether exigent circumstances objectively justified the entry.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Arlando Tolson v. State of Kansas

TOPICS

- evidence
- criminal procedure
- search and seizure
- warrant requirement
- relevance

PRACTICE AREAS

criminal law

criminal procedure

evidence

constitutional law

QUESTIONS PRESENTED

1. Whether evidence of Tolson's prior criminal acts was admissible under K.S.A. 60-455 to prove motive, plan, knowledge, or intent relating to the underlying marijuana-sale felony supporting the felony-murder charge.
2. Whether exigent circumstances justified the police officers' warrantless entry and protective sweep of the residence at 8118 Paseo before obtaining a search warrant, such that the subsequent warrant-based search was not invalid.

HOLDINGS

1. The prior-acts evidence was admissible for the limited purpose of showing Tolson's knowledge and intent concerning the commission of or attempt to commit the underlying marijuana-sale felony supporting the felony-murder charge.
2. Exigent circumstances objectively justified the officers' warrantless entry into and limited protective sweep of the residence at 8118 Paseo.

KEY QUOTATIONS

“There are three requirements which must be satisfied for evidence to be admitted under K.S.A. 60-455.” (at 563)

“Because the jury is presumed to have taken the elements of the underlying felony into account, as demonstrated by the jury's being instructed on those elements, relevance to an element of the predicate felony reasonably could be found to be sufficient for admissibility.” (at 566)

“In these circumstances, it is objectively reasonable to conclude that exigent circumstances existed that permitted a warrantless entry into the house.” (at 571)

FACTUAL BACKGROUND

Tolson arranged to purchase approximately 20 pounds of marijuana from Austin Garza for \$13,500. During the transaction, Tolson and Garza struggled over a trash bag containing the marijuana, and Tolson shot Garza in the leg, causing fatal blood loss, before fleeing in a black Corvette. Police pursued the vehicle into Missouri and found it behind a residence at 8118 Paseo, where they conducted a brief warrantless sweep based on concerns that Tolson was armed, might be inside, might have taken hostages, or might destroy evidence. After obtaining a search warrant, officers found marijuana, drug paraphernalia, firearms, ammunition, and other evidence connecting Tolson to the shooting and drug transaction.

PROCEDURAL HISTORY

After Garza was shot and killed during a drug transaction, Tolson was charged with and convicted of felony murder. The trial court admitted evidence of two prior drug-related criminal acts under K.S.A. 60-455 and

denied Tolson's motion to suppress evidence seized from a residence after police made a warrantless protective sweep and then obtained a search warrant. The Supreme Court of Kansas affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Lane, 262 Kan. 373, 388, 940 P.2d 422 (1997)
- State v. Rucker, 267 Kan. 816, 824, 987 P.2d 1080 (1999)
- State v. Damewood, 245 Kan. 676, 682, 783 P.2d 1249 (1989)
- State v. Jordan, 250 Kan. 180, Syl. ¶ 8, 825 P.2d 157 (1992)
- State v. Faulkner, 220 Kan. 153, 156, 551 P.2d 1247 (1976)
- United States v. Logan, 121 F.3d 1172, 1178 (8th Cir. 1997)
- United States v. Hardy, 224 F.3d 752, 757 (8th Cir. 2000)
- State v. Weas, 26 Kan. App. 2d 598, 992 P.2d 221 (1999), rev. denied, 268 Kan. 895 (2000)
- State v. Platten, 225 Kan. 764, 769-70, 594 P.2d 201 (1979)
- United States v. Reed, 572 F.2d 412, 424 (2d Cir.), cert. denied, 439 U.S. 913 (1978)
- People v. Escudero, 23 Cal. 3d 800, 811, 153 Cal. Rptr. 825, 592 P.2d 312 (1979)