

SUPREME COURT OF KANSAS

State v. Gant, 288 Kan. 76

201 P.3d 673 (2009) · No. No. 98,026 · Decided January 30, 2009

SUMMARY

The Kansas Supreme Court affirmed Christopher D. Gant’s convictions for felony murder and attempted aggravated robbery, as well as his sentence for attempted aggravated robbery. The court held that Gant’s statements to occupants of his vehicle did not constitute an unambiguous request for counsel during custodial interrogation and that he validly waived his Miranda rights. The court also rejected his claims concerning witness proximity to the prosecution, aggravated sentencing, sufficiency of the evidence, sentencing disparity, and discriminatory prosecution.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Rosen, J.; Marquardt, J., assigned; McFarland, C.J., not participating
JURISDICTION	Kansas
DECIDED	January 30, 2009
DOCKET	No. 98,026
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gant appealed directly to the Supreme Court of Kansas from convictions for felony murder and attempted aggravated robbery and the resulting sentences.
STANDARD OF REVIEW	Suppression ruling factual findings are reviewed for substantial competent evidence, while the ultimate legal conclusion is reviewed de novo. Unpreserved constitutional claims are generally not considered on appeal. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence in the light most favorable to the prosecution, a rational factfinder could have found guilt beyond a reasonable doubt. A preserved ruling allowing a witness to sit at counsel table is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Christopher D. Gant v. State of Kansas

TOPICS

miranda rights

right to counsel

suppression of evidence

sentencing

criminal procedure

PRACTICE AREAS

criminal procedure

criminal appeals

constitutional criminal law

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evidence

QUESTIONS PRESENTED

1. Whether Gant unambiguously invoked his Miranda right to counsel before the custodial interview, requiring suppression of his statements.
2. Whether the presence of Detective Bachman at the prosecution table before her testimony constituted reversible error.
3. Whether imposing the high end of the Kansas sentencing-guidelines grid block without jury findings violated the constitutional right to trial by jury.
4. Whether sufficient evidence supported Gant's convictions under an aiding-and-abetting theory.
5. Whether the district court was required to account for an accomplice's later plea agreement and reduced charges when sentencing Gant.
6. Whether the State's failure to offer Gant the same type of plea agreement as an accomplice constituted discriminatory or selective prosecution.

HOLDINGS

1. Gant's statement to the occupants of his car that they should call a lawyer was, at most, ambiguous and was not an unambiguous request for counsel to be present during the later custodial interrogation. The district court therefore properly admitted his interview statements.
2. The issue was not properly before the court because Gant made no contemporaneous objection and asserted no specific prejudice. A law-enforcement witness's presence at the prosecutor's table is not per se an abuse of discretion.
3. A sentence within the range stated in a Kansas sentencing-guidelines presumptive grid block does not violate Apprendi or Cunningham merely because the court imposed the high end of that range.
4. The evidence was sufficient for a rational jury to find Gant guilty of felony murder and attempted aggravated robbery as an aider and abettor.
5. The district court was not required to account for an accomplice's later plea agreement or sentence when sentencing Gant, and there is no rational basis for comparing the sentences of a defendant convicted of felony murder and an accomplice who pleads guilty to less serious offenses.
6. Gant failed to establish discriminatory prosecution because he presented no evidence that similarly situated persons were generally not prosecuted or that he was intentionally selected for prosecution based on arbitrary or invidious criteria.

KEY QUOTATIONS

“A sentence to any term within the range stated in a Kansas sentencing guidelines presumptive grid block does not violate Cunningham v. California, 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856 (2007), or Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).” (678)

FACTUAL BACKGROUND

Gant drove three armed men to locations where they intended to commit robberies. At a North Kansas Street residence, the group confronted Donta McDonald at his truck; after McDonald reached under the seat, one of the men fired a shotgun and killed him, and Gant drove the group away without taking money. Gant later gave detectives statements describing his role, including that he knew of the intended robbery and transported the participants, and the jury convicted him under an aiding-and-abetting theory.

PROCEDURAL HISTORY

The State charged Gant with felony murder and attempted aggravated robbery. A jury found him guilty on both counts, and the district court imposed life imprisonment for felony murder and a consecutive 34-month sentence for attempted aggravated robbery. Gant timely appealed, challenging admission of his custodial statements, trial-witness placement, the aggravated grid sentence, sufficiency of the evidence, sentencing disparity, and alleged discriminatory prosecution.

DISPOSITION

affirmed

CASES CITED

- State v. Brown, 285 Kan. 261, 271-72, 173 P.3d 612 (2007)
- Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)
- McNeil v. Wisconsin, 501 U.S. 171, 178, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991)
- State v. Walker, 276 Kan. 939, 945, 80 P.3d 1132 (2003)
- Davis v. United States, 512 U.S. 452, 459, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994)
- State v. Gonzalez, 282 Kan. 73, 106, 145 P.3d 18 (2006)
- State v. Kirkpatrick, 286 Kan. 329, 342-43, 184 P.3d 247 (2008)
- State v. Reed, 282 Kan. 272, 280, 144 P.3d 677 (2006)
- In re Adoption of B.G.J., 281 Kan. 552, 563, 133 P.3d 1 (2006)
- State v. Gaudina, 284 Kan. 354, 372, 160 P.3d 854 (2007)
- State v. Johnson, 286 Kan. 824, Syl. ¶ 5, 190 P.3d 207 (2008)
- Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856, 166 L. Ed. 2d 856 (2007)
- Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- State v. Cook, 286 Kan. 1098, Syl. ¶ 8, 191 P.3d 294 (2008)
- State v. Gallegos, 286 Kan. 869, Syl. ¶ 10, 190 P.3d 226 (2008)
- State v. Gutierrez, 285 Kan. 332, 336, 172 P.3d 18 (2007)

- State v. Green, 254 Kan. 669, 687, 867 P.2d 366 (1994)
- State v. Goering, 225 Kan. 755, Syl. ¶ 2, 594 P.2d 194 (1979)
- State v. Burton, 35 Kan. App. 2d 876, 881, 136 P.3d 945 (2006)
- State v. Percival, 32 Kan. App. 2d 82, 95, 79 P.3d 211 (2003)
- State v. Gleason, 277 Kan. 624, 656, 88 P.3d 218 (2004)
- State ex rel. Murray v. Palmgren, 231 Kan. 524, 528, 646 P.2d 1091 (1982)
- State v. Castoreno, 255 Kan. 401, 413-14, 874 P.2d 1173 (1994)
- State v. Bailey, 251 Kan. 527, 530, 834 P.2d 1353 (1992)

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