

Summary of SC90607, State of Missouri v. Kellen C. McKinney

Appeal from the Jackson County circuit court, Judge Marco A. Roldan

Argued and submitted May 18, 2010; opinion issued June 29, 2010

Attorneys: McKinney was represented by Frederick J. Ernst of the public defender's office in Kansas City, (816) 889-7699, and the state was represented by Shaun J. Mackelprang and Robert J. (Jeff) Bartholomew of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A defendant charged with attempted escape from confinement as well as murder and armed criminal action appeals the trial court's judgment permitting the escape charge to be tried with the other charges. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. Joinder of the charges was proper because they share a dependence and relationship with each other that renders them connected, and the evidence pertaining to each was sufficiently simple to avoid confusion for the jury, thereby providing no need to sever the charges to prevent prejudice to the defendant.

Facts: Kellen McKinney was arrested for the murders of John and Mildred Caylor after being linked to the crime by blood, DNA and other evidence. While McKinney was incarcerated, jailers searching his cell found certain evidence – including a latch missing from his cell, a number of bed sheets tied together, mortar in the wall near his cell window that had been chiseled and loosened, and a hand-drawn map of the jail area – that he was planning an escape. As a result, a charge of attempted escape from confinement while under arrest for a felony was added to his previous charges for first-degree murder and armed criminal action. McKinney filed a motion to sever the attempted escape charge from the other charges, arguing joinder was improper under section 545.140, RSMo 2000, and Rule 23.05. The trial court concluded the state was entitled to join McKinney's attempted escape offense to the other charges because it showed his consciousness of guilt. McKinney ultimately was convicted of all charges and was sentenced to consecutive terms of life in prison for the murder and armed criminal action charges and a consecutive four-year prison term for the escape charge. He appeals.

AFFIRMED.

Court en banc holds: (1) The trial court did not err in finding that joinder was proper. Rule 23.05 permits joinder of offenses that are of the same or similar character, are part of the same transaction, are parts of connected transactions, or constitute parts of a common scheme or plan. Section 545.140.2 similarly permits joinder of offenses that are of the same or similar character, are based on the same act or transaction or connected transactions, or are parts of a common scheme of plan. For purposes of joinder, "connected" can include connections by time, by similarities in the manner they were committed, by motive, and by their dependence and relationship to each other. McKinney's charges shared a "dependence and relationship to one another" that rendered them "connected" in satisfaction of the joinder provisions of Rule 23.05 and section 545.140.2. His incarceration for the felony charges for murder and armed criminal

action provided the basis for the state to charge him with attempted escape from confinement while under arrest for a felony, his apparent motive for the attempted escape was avoidance of prosecution for the other charges, and the trial court correctly found his attempted escape provided evidence of his consciousness of guilty that was relevant to the other charges.

(2) The trial court did not abuse its discretion in determining severance of the attempted escape charge was unnecessary. Severance is proper only after the defendant makes a particularized showing of substantial prejudice if the offense is not tried separately and after the court finds the existence of bias or discrimination against the party that requires a separate trial of the offense. Here, there is no such prejudice. The evidence relating to the attempted escape charge and the murder and armed criminal action charges was sufficiently simple and distinct to allow the jury to distinguish the evidence for each offense and apply it without confusion, thereby mitigating any risks from joinder.