

595 P.3d 857 (Table)

Unpublished Disposition

This decision without published opinion is referenced in the Pacific Reporter. See Kan. Sup. Ct. Rules, Rule 7.04.

NOT DESIGNATED FOR PUBLICATION

Court of Appeals of Kansas.

Efrain GONZALEZ Jr., Appellant,

v.

STATE of Kansas, Appellee.

No. 128,829

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Oral Argument Held July 21, 2026.

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Opinion Filed September 11, 2026.

Appeal from Wyandotte District Court; [Daniel Cahill](#), judge.**Attorneys and Law Firms**[Jonathan Laurans](#), of Kansas City, Missouri, for appellant.

[David Greenwald](#), assistant district attorney, Mark A. Dupree Sr., district attorney, and [Kris W. Kobach](#), attorney general, for appellee.

Before [Warner](#), C.J., [Schroeder](#), J., and [Jason E. Geier](#), District Judge, assigned.

MEMORANDUM OPINION

Per Curiam:

***1** Following his convictions of felony murder, attempted aggravated robbery, and conspiracy to commit aggravated robbery, Gonzalez filed a [K.S.A. 60-1507](#) motion, alleging claims of ineffective assistance of trial counsel. The district court held an evidentiary hearing and denied Gonzalez' motion. Gonzalez timely appeals, claiming the district court erred in denying his motion. After careful review, we agree with Gonzalez and find the district court erred in denying Gonzalez' motion on the basis his trial counsel performed deficiently, which prejudiced Gonzalez. We therefore reverse and remand to the district court to conduct a new trial.

Factual and Procedural Background

The underlying facts of this case were set forth fully by our Supreme Court in [State v. Gonzalez](#), 311 Kan. 281, 282-85, 460 P.3d 348 (2020). Relevant to this appeal, Gonzalez drove his car into an alley behind a bar in Kansas City; the passenger, Filiberto Espinoza, shot and killed Louis Scherzer in the alley. 311 Kan. at 282, 284. Additionally, Gonzalez' attorneys had him provide a pretrial statement to the police about what happened when Scherzer was shot. Both parties agreed that the proffered statement would not be admissible for any reason unless Gonzalez opened the door.

A jury convicted Gonzalez of first-degree felony murder, attempted aggravated robbery, and conspiracy to commit aggravated robbery. The district court sentenced Gonzalez to lifetime imprisonment with no possibility of parole for 25 years for first-degree murder, 32 months' imprisonment for attempted aggravated robbery, and 32 months' imprisonment for conspiracy to commit aggravated robbery. The district court ordered all sentences run consecutive. Gonzalez appealed, and our Supreme Court affirmed [Gonzalez' convictions](#). 311 Kan. at 282. A mandate was issued on April 28, 2020.

Gonzalez timely filed a [K.S.A. 60-1507](#) motion alleging 12 claims of ineffective assistance of counsel. The district court held an evidentiary hearing, allowed the parties to submit written briefs before issuing an opinion, and ultimately denied the [K.S.A. 60-1507](#) motion. Additional facts are set forth as necessary.

Analysis

Gonzalez argues his trial counsel was ineffective in representing him for failing to raise a voluntary intoxication defense, failing to make a proper record to compel his codefendant's testimony, failing to properly inform him of his need to testify, failing to object to an erroneous jury instruction, and for eliciting inculpatory statements from a detective. Gonzalez asserts the district court erred in denying his [K.S.A. 60-1507](#) motion and asks us to reverse the district court's denial and remand for a new trial.

After an evidentiary hearing on a [K.S.A. 60-1507](#) motion, the district court must issue findings of fact and conclusions of law on all issues presented. [K.S.A. 60-1507\(b\)](#); [Supreme](#)

[Court Rule 183\(j\)](#) (2026 Kan. S. Ct. R. at 242). We review the district court's findings of fact to determine whether they are supported by substantial competent evidence and are sufficient to support the district court's conclusions of law. Our review of the district court's ultimate conclusions of law is de novo. [Khalil-Alsalaami v. State](#), 313 Kan. 472, 486, 486 P.3d 1216 (2021).

*2 A district court must set aside a movant's conviction if “there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack.” [K.S.A. 60-1507\(b\)](#). The right to *effective* counsel is embodied in the Sixth Amendment to the United States Constitution and “plays a crucial role in the adversarial system.” [Strickland v. Washington](#), 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); see [Chamberlain v. State](#), 236 Kan. 650, 657, 694 P.2d 468 (1985) (adopting *Strickland*). Ineffective assistance of counsel can be categorized into three subgroups, one of which is a claim reflecting defense counsel's “ ‘performance was so deficient that the defendant was denied a fair trial.’ ” [Sola-Morales v. State](#), 300 Kan. 875, 882, 335 P.3d 1162 (2014). That is, “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” [Strickland](#), 466 U.S. at 686.

“To prevail on a claim of ineffective assistance of trial counsel, a criminal defendant must establish (1) that the performance of defense counsel was deficient under the totality of the circumstances, and (2) prejudice, i.e., that there is a reasonable probability the jury would have reached a different result absent the deficient performance.” [State v. Salary](#), 309 Kan. 479, 483, 437 P.3d 953 (2019).

We will first address Gonzalez’ claim related to his trial counsel eliciting inculpatory statements from the lead detective during trial. Based on our findings, we need not address Gonzalez’ other claims.

Gonzalez alleges the district court erred in finding he was not prejudiced by his trial counsel eliciting testimony from the lead detective, Danon Vaughn, of Gonzalez’ inculpatory statements made prior to trial in a proffer which both parties agreed would not be presented to the jury. Gonzalez asks us to reverse and remand for a new trial.

The jury convicted Gonzalez of attempted aggravated robbery, felony murder based on the attempted aggravated robbery, and conspiracy to commit aggravated robbery.

“Robbery is knowingly taking property from the person or presence of another by force or by threat of bodily harm to any person.” [K.S.A. 21-5420\(a\)](#). The crime becomes aggravated when the person committing the crime is either “armed with a dangerous weapon,” or “inflicts bodily harm upon any person in the course of such robbery.” [K.S.A. 21-5420\(b\)\(1\)-\(2\)](#). “An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.” [K.S.A. 21-5301\(a\)](#).

First-degree felony murder “is the killing of a human being committed ... in the commission of, attempt to commit, or flight from any inherently dangerous felony.” [K.S.A. 21-5402\(a\)\(2\)](#). Aggravated robbery is an inherently dangerous felony. [K.S.A. 21-5402\(c\)\(1\)\(D\)](#).

“A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.” [K.S.A. 21-5302\(a\)](#).

At trial, Gonzalez’ trial counsel elicited the following information from Vaughn:

“[Trial counsel]: Do you have any evidence that Mr. Gonzalez said to Mr. Espinoza, I want his money?

“[Vaughn]: Yes.

“[Trial counsel]: And that evidence would be what?

“[Vaughn]: That evidence would be his admission. That evidence would be the fact that they discussed pointing out Mr. Scherzer, identifying, ... pinpointing a victim, targeting a victim for the robbery that they attempted to do when they murdered Mr. Scherzer.”

*3 The prosecutor objected to allow trial counsel an opportunity to stop the line of questioning before opening the door to Gonzalez’ pretrial proffer. Trial counsel then started asking about Gonzalez’ text messages before the attempted robbery, but co-counsel interrupted and ended the cross-examination.

Aside from Vaughn's testimony of Gonzalez’ admission, very little evidence was produced about the attempted robbery. The State presented evidence related to the shooting and of Gonzalez fleeing a traffic stop. The only evidence presented

related to the attempted robbery was text messages stating Gonzalez was “teammates grip” and that he was going to get some paper. Vaughn and Tiffany Burgtorf, the two detectives investigating the case, both testified that, in their experience, getting paper referred to a robbery. Scherzer still had his wallet with cash on him after the shooting occurred.

On direct appeal, our Supreme Court addressed Gonzalez’ sufficiency of the evidence claim:

“In Gonzalez’ case, proof of intent to commit robbery admittedly begins with some ambiguous circumstances. His text messages on their face convey no such intent, and Scherzer’s property was not taken. Likewise, while the evidence shows Gonzalez was in the alleyway late at night, minutes earlier he had evaded a traffic stop several blocks away and Officer Garrett was in the area looking for him. But what gives all the evidence a concrete context is Detective Vaughn’s testimony that either Gonzalez or Espinoza said they had discussed finding a victim that night for a robbery. This testimony was admitted without objection.

....

“The investigators’ explanations for the text messages exchanged before the shooting show Gonzalez and Espinoza operated as ‘teammates’ in an enterprise to ‘get paper.’ And Detective Vaughn’s testimony gave these messages more meaning by showing one of the pair admitted they discussed targeting a victim for a robbery. Taken together, we hold the evidence was sufficient for a rational fact-finder to conclude Gonzalez entered into an agreement with Espinoza to commit an aggravated robbery.” *Gonzalez*, 311 Kan. at 289-90.

At the *K.S.A. 60-1507* hearing, the district court found the detective’s testimony explaining the meaning of Gonzalez’ text messages was properly admitted and the text messages were “crucial to finding intent,” especially considering other evidence. The district court relied on evidence of Gonzalez’ Facebook history showing an ongoing friendship with Espinoza, another police officer placing Gonzalez’ vehicle in the area at the time of the shooting, the description of the vehicle by witnesses, Gonzalez’ Snapchat video showing him in the same area fleeing from an officer shortly before the shooting, and the shell casings at the scene matching the gun found at Gonzalez’ mother’s residence with his DNA on the magazine. The district court explained the evidence as a whole supported the conclusion Gonzalez

and Espinoza agreed to commit the robbery and Gonzalez intended to aid and abet the robbery. The district court concluded the detective’s reference to Gonzalez’ admission was not prejudicial.

While the district court’s findings of fact are supported by substantial competent evidence, the district court’s findings were misplaced. The evidence of Gonzalez’ Facebook history primarily established his relationship with Espinoza; witness testimony identifying and placing Gonzalez’ vehicle in the area at the time of the shooting does not establish or support an attempted robbery conviction; the Snapchat video merely shows Gonzalez fleeing from an officer prior to the shooting; and the shell casings do not show an attempted robbery took place. The evidence the district court relied on simply placed the vehicle in the general area and confirmed Gonzalez was, in some way, involved in a shooting incident. In fact, the State charged Gonzalez with premeditated first-degree murder or, alternatively, felony murder. The jury acquitted Gonzalez of premeditated first-degree murder and found him guilty of felony murder. However, no jury could find the evidence—the ambiguous text messages about being teammates and getting paper—establishes beyond a reasonable doubt Gonzalez performed an overt act to knowingly take property from Scherzer by force or threat of bodily harm but failed in doing so to support the felony murder conviction. Nor could a reasonable jury find beyond a reasonable doubt the evidence showed Gonzalez and Espinoza made an agreement to attempt to take property from Scherzer by force or threat.

*4 Without Vaughn’s testimony elicited by trial counsel from Gonzalez’ pretrial proffered admission to the attempted robbery, the evidence appears scant and insufficient to prove beyond a reasonable doubt Gonzalez attempted to commit an aggravated robbery or conspired to commit aggravated robbery. Gonzalez, therefore, could not have killed a human being in the attempt to commit the aggravated robbery. Gonzalez established Vaughn’s testimony of Gonzalez’ admission to the attempted aggravated robbery prejudiced him.

Had Gonzalez or Espinoza testified, trial counsel’s performance would not be deficient to the point it prejudiced Gonzalez as their testimony would have opened the door for the State to cross-examine them.

The district court erred in denying Gonzalez’ *K.S.A. 60-1507* motion on the basis his trial counsel performed deficiently in eliciting inculpatory statements from Vaughn at trial,

and the deficient performance prejudiced Gonzalez. We are convinced trial counsel's deficient performance affected the outcome of the verdict. We therefore reverse and remand for a new trial.

Reversed and remanded with directions.

All Citations

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