305 Kan. 1072
Supreme Court of Kansas.

STATE of Kansas, Appellant,
v.
Dustin Alex **EVANS**, Appellee.

No. 112,000
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Opinion filed March 10, **2017**

Synopsis
Background: After defendant was charged with aggravated battery, defendant moved for a grant of self-defense immunity. The District Court, Johnson County, Thomas Kelly Ryan, J., 2014 WL 1672564, granted defendant's motion and dismissed charge. **State** appealed. The Court of Appeals, 51 Kan.App.2d 1043, 360 P.3d 1086, reversed and remanded. Defendant petitioned for review, which was granted.

Holdings: The Supreme Court, Stegall, J., held that:

[1] in evaluating motion for self-defense immunity, trial court was required to weigh the evidence before it without deference to the **State**, and

[2] **State** failed to establish probable cause that the defendant's use of force was not statutorily justified.

Court of Appeals decision reversed; district court decision affirmed.

West Headnotes (2)

[1] Criminal Law Special pleas in bar in general

When reviewing a defendant's motion for a grant of self-defense immunity, trial court was required to consider the totality of the circumstances, weigh the evidence before it without deference to the **State**, and determine whether the **State** carried its burden to establish probable cause that the defendant's use of force was not statutorily justified. Kan. Stat. Ann. § 21-5231.

2 Cases that cite this headnote

[2] Criminal Law Special pleas in bar in general

State failed to establish probable cause that the defendant's use of force was not statutorily justified, and therefore defendant was entitled to self-defense immunity in aggravated battery prosecution. Kan. Stat. Ann. § 21-5231.

1 Cases that cite this headnote

Syllabus by the Court

Applying the analysis adopted in *State v. Hardy*, 305 Kan. ——, 390 P.3d 30 (No. 110982, **2017** WL 986165, this day decided), it is held that the district court properly granted **Evans** statutory immunity pursuant to K.S.A. 2016 Supp. 21–5231.

Review of the judgment of the Court of Appeals in 51 Kan.App.2d 1043, 360 P.3d 1086 (2015). Appeal from Johnson District Court; THOMAS KELLY RYAN, judge.

Attorneys and Law Firms

Shawn E. Minihan, assistant district attorney, Stephen M. Howe, district attorney, and Derek Schmidt, attorney general, were on the brief for appellant.

Thomas J. Bath, Jr., and Tricia A. Bath, of Bath & Edmonds, P.A., of Overland Park, were on the brief for appellee.

Opinion

The opinion of the court was delivered by Stegall, J.:

***1072** After a night of drinking, Dustin Alex **Evans** and his neighbor, Jose Luis Pena, Jr., were conversing alone in **Evans**' garage when they agreed to compete in some "mixed martial arts" or "jiu jitsu style" wrestling. They decided to "grapple" for fun until one of them "tap[ped] out." After **Evans** pulled a wrestling mat out onto his driveway, the two began a friendly wrestling match. The match eventually soured, although **Evans** and Pena disagree about the cause. **Evans** claimed that Pena put his hand over **Evans**' mouth and tried to suffocate him, but Pena said **Evans** got upset for no reason. After **Evans** broke free from Pena's grasp, he got up and went into his garage, claiming that Pena tried to kill him. The parties dispute whether Pena followed **Evans** into the garage and whether Pena threatened to kill **Evans**.

Once inside his garage, **Evans** grabbed a katana-style **sword** and stabbed Pena in the ****1279** abdomen. **Evans** asserted that Pena advanced on him in the garage, threatening to kill **Evans**. Pena claimed that he never entered **Evans**' garage, but crime scene photographs showed an apparent blood trail beginning inside the garage and extending through the garage onto the driveway, front porch steps, and across ***1073** the street. Pena also claimed that he used his arms to deflect **Evans**' first two attempts to stab him. According to Pena, **Evans** stabbed his forearm before he deflected another strike with his arms, and then he felt a strike to his chest. The parties later stipulated that the operating surgeon observed no injuries to Pena's arms and that his medical records did not reflect such injuries. **Evans** called 911 to report the stabbing. When law enforcement arrived at the scene, **Evans** told them that he had stabbed Pena in self-defense.

The **State** charged **Evans** with aggravated battery. After the preliminary hearing, **Evans** moved for a grant of immunity pursuant to K.S.A. 2016 Supp. 21–5231. The district court gave the parties the option of conducting an evidentiary hearing and/or submitting exhibits for the court's consideration, and both the **State** and **Evans** submitted numerous stipulated exhibits; only **Evans** presented testimony at a hearing. One of the law enforcement officers **Evans** called to testify **stated** that when he interviewed Pena at the hospital, Pena said he had followed **Evans** into the garage. But when the officer met with Pena on the day of the preliminary hearing, Pena claimed for the first time that he never entered the garage that night and that **Evans** had struck him three times, injuring his arm.

The district court weighed the evidence and found that Pena's testimony—which changed multiple times and did not comport with the blood trail evidence—was not credible. Thus it granted **Evans** immunity and dismissed the charges.

The **State** appealed. Applying the approach adopted in *State v. Hardy*, 51 Kan.App.2d 296, 347 P.3d 222 (2015), *rev'd* 305 Kan. ——, 390 P.3d 30 (No. 110,982, **2017** WL 986165, this day decided), a majority of a Court of Appeals' panel reversed the district court's decision and reinstated the complaint. *State v. Evans*, 51 Kan.App.2d 1043, 1054, 360 P.3d 1086 (2015). The majority held that "the district court must view the evidence in a light favoring the **State**, meaning conflicts in the evidence must be resolved to the **State's** benefit and against a finding of immunity." 51 Kan.App.2d 1043, Syl. ¶ 4, 360 P.3d 1086. Under this standard, the majority concluded that "if the judge had viewed the evidence in a light favoring the **State**, it was sufficient to find probable cause to rebut **Evans**' claim of immunity and submit the case to a jury." 51 Kan.App.2d at 1053–54, 360 P.3d 1086. We granted **Evans**' ***1074** petition for review.

[1]Our decision in *State v. Hardy*, 305 Kan. ——, 390 P.3d 30 (No. 110982, **2017** WL 986165, this day decided), controls our decision in **Evans**' case. In *Hardy* we held:

> "1. Upon a motion for immunity pursuant to K.S.A. 2016 Supp. 21–5231, the district court must consider the totality of the circumstances, weigh the evidence before it without deference to the **State**, and determine whether the **State** has carried its burden to establish probable cause that the defendant's use of force was not statutorily justified.
>
> "2. The court's determination of probable cause must be premised on stipulated facts or evidence, on evidence received at a hearing pursuant to the rules of evidence, or both." Syl. ¶¶ 1, 2.

This is exactly what occurred in the district court here. Indeed, the reviewing Court of Appeals' panel acknowledged:

> "Whether the district court erred in granting immunity to **Evans** turns on whether the district court was required to view the conflicting evidence in a light favoring the **State**.
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> ....
>
> "If the district court was not required to view the evidence in a light favoring the **State**, the judge could have found in favor ****1280** of either **Evans** or the **State** and there was sufficient evidence that would have

supported either finding. But if the judge had viewed the evidence in a light favoring the **State**, it was sufficient to find probable cause to rebut **Evans**' claim of immunity and submit the case to a jury." *Evans*, 51 Kan.App.2d at 1051–54, 360 P.3d 1086.

The Court of Appeals held the district court was required to view the evidence in a light favoring the **State** and, therefore, the grant of immunity was error as a matter of law. *Evans*, 51 Kan.App.2d at 1054, 360 P.3d 1086 (citing *Hardy*, 51 Kan.App.2d at 304, 347 P.3d 222). Because we have now enunciated a different rule of law, we are obliged to reverse the Court of Appeals. The district court followed the correct procedure.

[2]We next turn to the merits of the district court's ruling. In so doing, we apply a bifurcated standard of review to a district court's determination of probable cause pursuant to K.S.A. 2016 Supp. 21–5231. We review any fact finding by the district court for substantial competent evidence without reweighing the evidence, and we exercise unlimited review over the ultimate legal conclusion drawn from those facts. *Hardy*, Syl. ¶ 5. While we have reversed ***1075** the Court of Appeals' holding, we agree with the panel's evaluation of the evidence presented below. Our review of the record indicates, as noted by the Court of Appeals, substantial competent evidence to support the district court's factual findings. See *Evans*, 51 Kan.App.2d at 1053, 360 P.3d 1086. Given these facts, the district court's determination—that the **State** failed to demonstrate probable cause that **Evans**' use of force was not statutorily justified—was not error as a matter of law. Thus, the district court correctly granted **Evans** statutory immunity pursuant to K.S.A. 2016 Supp. 21–5231.

The decision of the Court of Appeals is reversed, and the decision of the district court granting immunity and dismissing the case against **Evans** is affirmed.

Johnson, J., not participating.

John L. Weingart, District Judge, assigned.[1]

All Citations

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Footnotes

1 **REPORTER'S NOTE:** District Judge Weingart was appointed to hear case No. 112,000 vice Justice Johnson under the authority vested in the Supreme Court by art. 3, § 6(f) of the Kansas Constitution.