

SUPREME COURT OF NEBRASKA

State v. Krannawitter

305 Neb. 66 (2020) · No. No. S-19-014 · Decided February 21, 2020

SUMMARY

The Nebraska Supreme Court affirmed Amy J. Krannawitter’s conviction and sentence for third-offense driving under the influence. The court held that the police encounter was a seizure supported by reasonable suspicion and that the district court properly denied the motion to suppress. It also held that amended breath-test certificates were newly discovered evidence but did not warrant a new trial because the breath-test results remained admissible and would not likely have produced a different result.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	February 21, 2020
DOCKET	No. S-19-014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Krannawitter appealed her conviction and sentence for third-offense driving under the influence, challenging the denial of her motion to suppress and the denial of her amended motion for a new trial based on newly discovered evidence.
STANDARD OF REVIEW	For a Fourth Amendment suppression ruling, historical facts are reviewed for clear error, while the ultimate question whether those facts trigger or violate Fourth Amendment protection is reviewed independently as a question of law. Denial of a motion for new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Amy J. Krannawitter v. State of Nebraska

TOPICS

fourth amendment

search and seizure

suppression of evidence

evidence

criminal procedure

PRACTICE AREAS

criminal procedure

DUI

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the deputy's encounter with Krannawitter constituted a seizure under the Fourth Amendment and, if so, whether it was supported by reasonable suspicion.
2. Whether amended certificates of analysis concerning the breath-testing solutions constituted newly discovered evidence warranting a new trial.
3. Whether the amended certificates demonstrated that the breath-test results lacked an adequate foundation for admission.
4. Whether the amended certificates were testimonial for purposes of the Confrontation Clause.

HOLDINGS

1. The encounter was a Fourth Amendment seizure, but it was supported by reasonable suspicion based on the totality of the circumstances, including the deputy's particularized knowledge of the neighborhood, the unusual early-morning presence of an unfamiliar vehicle, and the driver's evasive behavior.
2. The amended certificates of analysis qualified as newly discovered evidence because the defense could not have discovered and produced them at trial with reasonable diligence.
3. The amended certificates did not warrant a new trial because, even if admitted at the original trial, they would not probably have produced a substantially different result.
4. The amended certificates of analysis were nontestimonial and therefore did not violate Krannawitter's confrontation rights.

KEY QUOTATIONS

“A seizure in the Fourth Amendment context occurs only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.” (305 Neb. at 72)

“We conclude that when the totality of the circumstances is considered, Guthard’s seizure of Krannawitter was supported by a particularized and objective basis for suspecting the particular person stopped of criminal activity.” (305 Neb. at 74)

“The amended certificates qualify as newly discovered evidence, and the district court erred in finding otherwise.” (305 Neb. at 76)

FACTUAL BACKGROUND

At approximately 6 a.m., Deputy Dennis Guthard observed an unfamiliar vehicle parked in the driveway of elderly neighbors whom he believed would still be asleep. When Guthard returned in his marked cruiser, the vehicle briefly began backing out, paused, and abruptly pulled back into the driveway. Guthard parked

approximately five feet behind the vehicle without activating his lights or siren, contacted Krannawitter, and observed signs of intoxication, including a strong odor of alcohol, bloodshot eyes, droopy eyelids, and slurred speech. A breath test administered approximately 90 minutes later showed an alcohol concentration of .235 grams per 210 liters of breath.

PROCEDURAL HISTORY

A Lancaster County deputy contacted Krannawitter after observing her vehicle parked in a neighbor's driveway at approximately 6 a.m. and then abruptly return to the driveway as he approached. The district court denied her motion to suppress, concluding the encounter was either a tier-one police-citizen encounter or, alternatively, a seizure supported by reasonable suspicion. After a jury convicted her, Krannawitter moved for a new trial based on amended certificates of analysis relating to the breath-testing machine; the district court denied that motion. The Nebraska Supreme Court affirmed the judgment and sentence.

DISPOSITION

affirmed

CASES CITED

- State v. Hartzell, 304 Neb. 82, 933 N.W.2d 441 (2019)
- State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016)
- State v. Schriener, 303 Neb. 476, 929 N.W.2d 514 (2019)
- Terry v. Ohio, 392 U.S. 1 (1968)
- Navarette v. California, 572 U.S. 393 (2014)
- State v. Barbeau, 301 Neb. 293, 917 N.W.2d 913 (2018)
- U.S. v. Harris, 313 F.3d 1228 (10th Cir. 2002)
- Illinois v. Wardlow, 528 U.S. 119 (2000)
- U.S. v. Campbell, 549 F.3d 364 (6th Cir. 2008)
- State v. Cross, 297 Neb. 154, 900 N.W.2d 1 (2017)
- State v. Jasa, 297 Neb. 822, 901 N.W.2d 315 (2017)
- State v. Fischer, 272 Neb. 963, 726 N.W.2d 176 (2007)
- State v. Richardson, 285 Neb. 847, 830 N.W.2d 183 (2013)