

SUPREME COURT OF NEBRASKA

State v. Nolt

298 Neb. 910 (2018) · No. No. S-17-073 · Decided February 9, 2018

SUMMARY

The Nebraska Supreme Court affirmed Michael A. Nolt’s convictions for first degree murder, manslaughter, weapons offenses, and possession of a deadly weapon by a prohibited person. The court held that the failure to timely return an OnStar search warrant was a ministerial defect that did not invalidate the warrant absent a clear showing of prejudice. The court also addressed the standards governing Nolt’s ineffective-assistance claims, identification evidence, hearsay, and related issues.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Kelch, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	February 9, 2018
DOCKET	No. S-17-073
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions and consecutive sentences following a jury trial in the Douglas County District Court.
STANDARD OF REVIEW	Fourth Amendment suppression rulings receive a two-part review: historical facts are reviewed for clear error, while the application of those facts to Fourth Amendment protections is reviewed independently. Statutory interpretation and legal determinations concerning counsel's performance and prejudice under Strickland are reviewed independently; factual findings underlying ineffective-assistance claims are reviewed for clear error.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Michael A. Nolt v. State of Nebraska

TOPICS

- search and seizure
- suppression of evidence
- warrant requirement
- ineffective assistance
- hearsay

PRACTICE AREAS

criminal procedure

constitutional law

evidence

appellate procedure

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the failure to return and file an OnStar search warrant within the statutory period invalidated the warrant and required suppression of evidence derived from it.
2. Whether trial counsel was ineffective for failing to move to suppress Valentine's in-court identification.
3. Whether trial counsel was ineffective for failing to object to Valentine's description of the shooter as inadmissible hearsay.
4. Whether trial counsel was ineffective for failing to investigate or present evidence concerning an alleged plan by the victims to kill Nolt and for failing to obtain communications concerning the GPS data and rental vehicle.
5. Whether cumulative ineffective assistance deprived Nolt of a fair trial.

HOLDINGS

1. The officer's failure to return the warrant within the statutory period was a ministerial postservice defect and, absent a clear showing of prejudice, did not invalidate an otherwise valid search warrant or require suppression.
2. Counsel was not ineffective for failing to seek suppression because the in-court identification was sufficiently reliable, and a suppression motion would have been futile.
3. Counsel was not ineffective for failing to object because Valentine's description qualified as an excited utterance.
4. Counsel was not ineffective for failing to obtain the alleged OnStar communications because the GPS evidence would have been admissible under inevitable discovery even if obtained before issuance of the warrant.
5. Counsel was not ineffective for failing to obtain communications with the rental company because police acquisition of the vehicle identification number was neither a Fourth Amendment search nor a seizure requiring a warrant.
6. Counsel was not ineffective for declining to elicit testimony about the alleged conversation because the decision was plausibly justified as a strategic choice to preserve Nolt's credibility.
7. The cumulative-error claim failed because none of the individual ineffective-assistance claims had merit.

KEY QUOTATIONS

"a failure in the ministerial act of returning and filing a search warrant does not void the warrant." (923)

"Identification evidence must be screened for reliability pretrial whenever it is obtained via unnecessarily suggestive procedures arranged by law enforcement officers." (927)

"reliability is the linchpin in determining the admissibility of identification testimony" (928)

FACTUAL BACKGROUND

Police responding to a shooting at an Omaha residence found two deceased men and a wounded woman, Valentine, who described the shooter as a white male. Investigation of a victim's cell phone and related hotel and vehicle information led police to Nolt, who was arrested in Arizona after being seen in the rental Impala and purchasing ammunition. A search of an Arizona residence produced a .40-caliber handgun, and Nolt's recorded jail calls contained statements concerning the shootings. Nolt testified that he shot the victims in self-defense.

PROCEDURAL HISTORY

Nolt was convicted of first degree murder, manslaughter, two counts of use of a deadly weapon to commit a felony, and possession of a deadly weapon by a prohibited person. The district court denied his motion to suppress evidence derived from an OnStar GPS warrant and imposed an aggregate sentence of life imprisonment plus 126 to 140 years. Nolt appealed, challenging the warrant, asserting ineffective assistance of counsel, and alleging cumulative error.

DISPOSITION

affirmed

CASES CITED

- State v. Jasa, 297 Neb. 822, 901 N.W.2d 315 (2017)
- State v. Smith, 286 Neb. 77, 834 N.W.2d 799 (2013)
- State v. Rocha, 286 Neb. 256, 836 N.W.2d 774 (2013)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Huston, 903 N.W.2d 907 (Neb. 2017)
- State v. Hinton, 226 Neb. 787, 415 N.W.2d 138 (1987)
- State v. McCown, 189 Neb. 495, 203 N.W.2d 445 (1973)
- State v. Moore, 2 Neb. Ct. App. 206, 508 N.W.2d 305 (1993)
- State v. Watt, 285 Neb. 647, 832 N.W.2d 459 (2013)
- Perry v. New Hampshire, 565 U.S. 228, 132 S. Ct. 716, 181 L. Ed. 2d 694 (2012)
- Manson v. Brathwaite, 432 U.S. 98, 114, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977)
- State v. Jacob, 242 Neb. 176, 494 N.W.2d 109 (1993)
- State v. Hale, 290 Neb. 70, 858 N.W.2d 543 (2015)
- State v. Ball, 271 Neb. 140, 710 N.W.2d 592 (2006)
- State v. Houser, 241 Neb. 525, 490 N.W.2d 168 (1992)
- State v. Jenkins, 294 Neb. 684, 884 N.W.2d 429 (2016)
- United States v. Jacobsen, 466 U.S. 109, 113, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984)
- Katz v. United States, 389 U.S. 347, 351, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)
- New York v. Class, 475 U.S. 106, 106 S. Ct. 960, 89 L. Ed. 2d 81 (1986)

- State v. Nesbitt, 279 Neb. 355, 777 N.W.2d 821 (2010)
- State v. Brown, 268 Neb. 943, 689 N.W.2d 347 (2004)

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