

SUPREME COURT OF NEBRASKA

State v. Surber

311 Neb. 320 (2022) · No. No. S-20-856 · Decided April 8, 2022

SUMMARY

The Nebraska Supreme Court affirmed Andres Surber’s convictions for first degree murder, use of a firearm to commit a felony, and possession of a firearm by a prohibited person. The court held that sufficient evidence supported the district court’s finding that Surber was competent to stand trial. It also concluded that Surber waived challenges to certain evidence by introducing evidence on the same subject and that any error concerning other evidence was harmless.

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.; McManaman, D.J.                                                                                                                                                                                                       |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                              |
| DECIDED               | April 8, 2022                                                                                                                                                                                                                                                                                         |
| DOCKET                | No. S-20-856                                                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Andres Surber appealed his convictions for first degree murder, use of a firearm to commit a felony, and possession of a firearm by a prohibited person, challenging the district court's competency determination and the admission of evidence obtained during searches of vehicles and residences. |
| STANDARD OF REVIEW    | Competency determinations are factual findings reviewed for insufficient evidence. Harmless-error review examines the entire record and considers the erroneously admitted evidence in relation to the untainted, relevant evidence of guilt.                                                         |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential                                                                                                                                                                                                                                                |
| PARTIES               | Andres Surber v. State of Nebraska                                                                                                                                                                                                                                                                    |

TOPICS

- criminal procedure
- fourth amendment
- suppression of evidence
- evidence
- appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

constitutional criminal procedure

evidence

## QUESTIONS PRESENTED

1. Whether the district court erred in finding Surber competent to stand trial.
2. Whether Surber waived suppression objections concerning evidence about which he testified at trial.
3. Whether any error in admitting bloodied clothes from the Galvan residence was harmless.
4. Whether the district court erred in admitting evidence obtained from the Impala and Galvan residence under exceptions to the warrant requirement and the plain-view doctrine.
5. Whether second searches of the Impala, the Galvan residence, and the Yukon violated the Fourth Amendment.

## HOLDINGS

1. The district court did not err in finding Surber competent to stand trial because sufficient evidence supported the determination, including the court's observations that Surber followed the proceedings and communicated with counsel.
2. Surber waived any appellate objection to the admission of the severed arm and leg and the bloodied boots because he introduced evidence on the same subject through his own testimony.
3. Any error in failing to suppress the bloodied clothes was harmless because the guilty verdicts were surely unattributable to the admission of that evidence.

## KEY QUOTATIONS

*"A person is competent to plead or stand trial if he or she has the capacity to understand the nature and object of the proceedings against him or her, to comprehend his or her own condition in reference to such proceedings, and to make a rational defense."* (330-331)

*"Harmless error review looks to the basis on which the trier of fact actually rested its verdict; the inquiry is not whether in a trial that occurred without the error a guilty verdict would surely have been rendered, but, rather, whether the actual guilty verdict rendered in the questioned trial was surely unattributable to the error."* (334)

## FACTUAL BACKGROUND

Kraig Kubik disappeared from his rural Nebraska home after being seen with Surber and Brayan Galvan. Investigators found blood, human remains, clothing, boots, a knife, and other evidence at locations associated with Surber and Galvan; a warrant search of a vehicle revealed a severed arm and leg. DNA and other evidence connected Kubik's remains and blood to those locations, and Surber testified that he shot Kubik in self-defense and then dismembered and disposed of the body. Surber's competency was repeatedly evaluated, and the district court ultimately found him competent after observing him communicate with counsel and follow the proceedings.

## PROCEDURAL HISTORY

Surber was repeatedly evaluated and treated for competency before the district court ultimately found him competent to stand trial. After a jury trial, he was convicted and sentenced to life imprisonment for first degree murder. The Nebraska Supreme Court affirmed, concluding that sufficient evidence supported the competency finding, that some suppression arguments were waived, that any error concerning the bloodied clothes was harmless, and that challenges concerning evidence from the Yukon did not require review because the State did not offer that evidence at trial.

## DISPOSITION

affirmed

## CASES CITED

- State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019)
- State v. Said, 306 Neb. 314, 945 N.W.2d 152 (2020)
- State v. Lang, 305 Neb. 726, 942 N.W.2d 388 (2020)
- State v. Andersen, 232 Neb. 187, 440 N.W.2d 203 (1989)
- State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021)
- State v. Jennings, 305 Neb. 809, 942 N.W.2d 753 (2020)
- U.S. v. Simpson, 645 F.3d 300 (5th Cir. 2011)
- U.S. v. Kiderlen, 569 F.3d 358 (8th Cir. 2009)
- U.S. v. Miller, 531 F.3d 340 (6th Cir. 2008)
- U.S. v. Jonassen, 759 F.3d 653 (7th Cir. 2014)

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