

SUPREME COURT OF NEBRASKA

State of Nebraska v. Nicholas Garcia

State v. Garcia, 311 Neb. 648 (2022) · No. No. S-21-361 · Decided May 27, 2022

SUMMARY

The Nebraska Supreme Court affirmed Nicholas Garcia’s convictions and sentence for first degree sexual assault. The court held that fellatio constituted sexual penetration under Nebraska law, that sufficient evidence supported findings of lack of consent or incapacity, and that the jury instructions were proper.

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	May 27, 2022
DOCKET	No. S-21-361
DISPOSITION	affirmed
PROCEDURAL POSTURE	Garcia appealed his jury convictions and sentence for first degree sexual assault, challenging the sufficiency of the evidence and the jury instruction defining sexual penetration.
STANDARD OF REVIEW	For sufficiency of the evidence, the court viewed the evidence in the light most favorable to the prosecution and asked whether any rational trier of fact could have found the essential elements beyond a reasonable doubt, without resolving credibility conflicts or reweighing evidence. Jury-instruction correctness was reviewed independently as a question of law. Refusal to give a requested instruction required the appellant to show that the instruction was legally correct, warranted by the evidence, and prejudicial.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Nicholas Garcia v. State of Nebraska

TOPICS

criminal procedure

jury instructions

standard of review

statutory interpretation

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish that Garcia subjected P.H. to sexual penetration under Neb. Rev. Stat. § 28-319(1).
2. Whether the evidence was sufficient to establish lack of consent or that Garcia knew or should have known that P.H. was mentally or physically incapable of resisting or appraising the nature of his conduct.
3. Whether the district court erred by refusing Garcia's proposed jury instruction defining penetration and by giving the instruction it used.

HOLDINGS

1. Fellatio performed by the defendant on the victim constitutes sexual penetration for purposes of Nebraska's first-degree sexual-assault statute. The statutory definition is not limited to situations in which the victim performs fellatio on the defendant.
2. The evidence was sufficient for a rational jury to find that P.H. did not consent or, alternatively, that Garcia knew or should have known that P.H. was unable to appraise the nature of his conduct.
3. The district court did not err in refusing Garcia's proposed instruction because the proposed definition was not a correct statement of the law, and the instruction given correctly stated the law, was not misleading, and adequately covered the issues.
4. Garcia waived any argument concerning jury unanimity because he did not raise it below or present it in his appellate brief.

KEY QUOTATIONS

"The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (651)

"The statutory definition of "sexual penetration" is not limited to only cases of the victim's fellating a defendant, nor can we conceive of any rationale for making such a distinction." (653)

FACTUAL BACKGROUND

Garcia and P.H., who worked together and were neighbors, spent the evening at Garcia's home drinking alcohol and apparently smoking marijuana. P.H. fell asleep fully clothed and could not be awakened; when he awoke several hours later, he was naked and discovered Garcia performing fellatio on him. Garcia initially denied the allegation, then suggested he may have mistaken P.H. for Garcia's boyfriend, and ultimately admitted performing fellatio on P.H.

PROCEDURAL HISTORY

After a jury trial in the Morrill County District Court, Garcia was convicted of first degree sexual assault and sentenced to 2 to 4 years' imprisonment. The Nebraska Supreme Court reviewed his direct appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Davis, 310 Neb. 865, 969 N.W.2d 861 (2022)
- State v. Clausen, 307 Neb. 968, 951 N.W.2d 764 (2020)
- State v. Gonzales, 219 Neb. 846, 366 N.W.2d 775 (1985)
- State v. Nadeem, 284 Neb. 513, 822 N.W.2d 372 (2012)
- State v. Lavalleur, 289 Neb. 102, 853 N.W.2d 203 (2014)