

NEBRASKA SUPREME COURT

State v. Hartzell

304 Neb. 82 (2019) · No. No. S-18-1105 · Decided September 20, 2019

SUMMARY

The Nebraska Supreme Court affirmed Shalynn R. Hartzell’s conviction and probationary sentence for possession of methamphetamine. The court held that the traffic stop ended when the officer returned Hartzell’s documents, told her to drive safely, and walked away; the officer’s subsequent request to talk and search the vehicle was a voluntary, tier-one encounter rather than a seizure. The court also held that it had jurisdiction over the premature appeal and disapproved the practice of entering separate sentencing and probation orders.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	September 20, 2019
DOCKET	No. S-18-1105
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hartzell appealed her conviction and probationary sentence for possession of methamphetamine, challenging the denial of her motion to suppress, motion to reconsider and vacate, and renewed motion to suppress. The Nebraska Supreme Court moved the appeal to its docket and affirmed.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is reviewed independently as a matter of law. Historical facts underlying a Fourth Amendment suppression ruling are reviewed for clear error, while whether those facts constitute a search or seizure violating the Fourth Amendment is reviewed independently as a question of law. When suppression is denied before trial and renewed during trial, the appellate court considers evidence from both the suppression hearings and the trial.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Shalynn R. Hartzell v. State of Nebraska

TOPICS

search and seizure

fourth amendment

suppression of evidence

appellate procedure

probation

PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had jurisdiction over an appeal filed after the oral announcement and initial entry of sentence but before entry of a separate probation order.
2. Whether the officer's traffic stop terminated before the officer reapproached Hartzell and requested consent to search her vehicle.
3. Whether the officer's second encounter with Hartzell was a Fourth Amendment seizure requiring reasonable suspicion.
4. Whether the district court erred in denying Hartzell's motion to suppress, motion to reconsider and vacate, and renewed motion to suppress.

HOLDINGS

1. The court had jurisdiction because Hartzell filed her notice of appeal after the announcement of a sentencing decision that would become final and appealable, and the premature notice sprang into effect upon entry of the complete sentencing judgment.
2. The practice of entering separate sentencing and probation orders is disapproved; a sentencing court should enter the entire judgment, including all probation terms and conditions, at one time.
3. The initial traffic stop terminated when the officer returned Hartzell's documents, told her to have a good night and drive carefully, and began walking away.
4. The officer's reapproach and request to talk and search constituted a tier-one consensual encounter, not a Fourth Amendment seizure.
5. The district court properly denied Hartzell's suppression motions because the officer did not unlawfully seize Hartzell during the second encounter and the search was not the product of a Fourth Amendment violation.

KEY QUOTATIONS

“The practice of entering separate sentencing and probation orders is disapproved. Instead, a sentencing court should enter its entire judgment, including all of the terms and conditions of probation, at one time.”
(304 Neb. at 89)

“Based upon the totality of the circumstances, we conclude that VanWinkle terminated the first encounter before beginning a new one.” (304 Neb. at 93)

“Under the totality of the circumstances, the factors regarding the second encounter do not support that a seizure occurred.” (304 Neb. at 94)

FACTUAL BACKGROUND

In March 2017, a Hastings police sergeant stopped Hartzell for expired registration tags, issued a fix-it ticket, returned her documents, and told her to have a good night and drive carefully. After beginning to walk away, the officer returned and asked whether Hartzell had a minute to talk; Hartzell agreed, and she consented to a vehicle search. The search uncovered marijuana, a scale containing a white crystalline substance, and a methamphetamine pipe; a later search after arrest found methamphetamine in Hartzell's bra. Hartzell was convicted of possession of methamphetamine after the district court denied her suppression motions.

PROCEDURAL HISTORY

After a traffic stop, Hartzell consented to a search of her vehicle, which produced drug-related evidence, and she was subsequently arrested. The district court denied her pretrial motion to suppress, declined to reconsider that ruling, and denied her renewed suppression motion at trial. Following a stipulated bench trial, the court convicted Hartzell of possession of methamphetamine and sentenced her to probation. The Supreme Court addressed jurisdiction because the sentencing and probation orders were entered separately, concluded that the premature notice of appeal became effective upon entry of the complete judgment, and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Thalmann, 302 Neb. 110, 921 N.W.2d 816 (2019)
- State v. Petsch, 300 Neb. 401, 914 N.W.2d 448 (2018)
- State v. Rivera, 297 Neb. 709, 901 N.W.2d 272 (2017)
- Lindsay Internat. Sales & Serv. v. Wegener, 297 Neb. 788, 901 N.W.2d 278 (2017)
- State v. Salyers, 239 Neb. 1002, 480 N.W.2d 173 (1992)
- State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019)
- State v. Garcia, 302 Neb. 406, 923 N.W.2d 725 (2019)
- State v. Gilliam, 292 Neb. 770, 874 N.W.2d 48 (2016)
- State v. Van Ackeren, 242 Neb. 479, 495 N.W.2d 630 (1993)
- State v. Schriener, 303 Neb. 476, 929 N.W.2d 514 (2019)
- State v. Hedgcock, 277 Neb. 805, 765 N.W.2d 469 (2009)
- State v. Barbeau, 301 Neb. 293, 917 N.W.2d 913 (2018)
- State v. Hansen, 63 P.3d 650 (Utah 2002)
- State v. Gorup, 279 Neb. 841, 782 N.W.2d 16 (2010)

