

SUPREME COURT OF NEBRASKA

State of Nebraska v. Marcus L. Hudson, 279 Neb. 6

775 N.W.2d 429 (2009) · No. No. S-09-130 · Decided December 11, 2009

SUMMARY

The Supreme Court of Nebraska affirmed Marcus L. Hudson's convictions for first degree murder, use of a firearm to commit a felony, and possession of a firearm by a felon. The court held that testimony concerning conversations between Hudson and a coconspirator was admissible under the Nebraska coconspirator exception to the hearsay rule. The court also held that the evidence was sufficient to support the convictions and that any error in admitting the testimony would have been harmless.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Sievers, Judge
JURISDICTION	Nebraska
DECIDED	December 11, 2009
DOCKET	No. S-09-130
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hudson appealed jury convictions for first degree murder, use of a firearm to commit a felony, and possession of a firearm by a felon, challenging the admission of coconspirator hearsay and the sufficiency of the evidence.
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; it did not resolve credibility conflicts or reweigh evidence. Admissibility of evidence under the Nebraska Evidence Rules was reviewed under the applicable rules, with abuse-of-discretion review where the rules made discretion relevant. Any evidentiary error was reviewed for harmlessness.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Marcus L. Hudson v. State of Nebraska

TOPICS

criminal procedure

hearsay

evidence

appellate procedure

harmless error

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether testimony by Shenika Johnson concerning statements by McDonald was admissible under the coconspirator exception to the hearsay rule.
2. Whether the evidence was sufficient to support Hudson's convictions for first degree murder, use of a firearm to commit a felony, and possession of a firearm by a felon.

HOLDINGS

1. The trial court properly admitted Johnson's testimony under the coconspirator exception because independent evidence established a prima facie conspiracy between Hudson and McDonald, and the statements were made during and in furtherance of that conspiracy.
2. Even if admission of Johnson's testimony had been erroneous, any error was harmless because the guilty verdict was surely unattributable to the testimony.
3. The evidence, viewed and construed most favorably to the State, was sufficient to support Hudson's convictions.

KEY QUOTATIONS

"The purpose of requiring independent evidence to establish a conspiracy is "to prevent the danger of hearsay evidence being lifted by its own bootstraps, i.e., relying on the hearsay statements to establish the conspiracy, and then using the conspiracy to permit the introduction of what would otherwise be hearsay testimony in evidence."" (at 436)

"In a harmless error review, an appellate court looks at the evidence upon which the jury 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 guilty verdict rendered in the trial was surely unattributable to the error." (at 437)

FACTUAL BACKGROUND

Hudson gave Will McDonald money to purchase cocaine, but McDonald and Anthony Nokia were robbed during the transaction, and McDonald identified Verron Jones as one of the robbers. Hudson threatened Jones and Jones's stepfather, searched for Jones with McDonald and Robert Sessions, and then approached Jones while armed and fired between 10 and 20 shots, killing him. Witnesses testified that Hudson later admitted shooting Jones, and physical evidence corroborated the shooting.

PROCEDURAL HISTORY

A jury convicted Hudson of first degree murder, use of a firearm to commit a felony, and possession of a firearm by a felon. The district court sentenced him to consecutive terms of life imprisonment, 10 to 20 years, and 5 to 10 years, respectively, with credit for 609 days served against the firearm sentence. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Branch, 277 Neb. 738, 764 N.W.2d 867 (2009)
- State v. Edwards, 278 Neb. 55, 767 N.W.2d 784 (2009)
- State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007)
- State v. Bobo, 198 Neb. 551, 253 N.W.2d 857 (1977)
- State v. Hansen, 252 Neb. 489, 562 N.W.2d 840 (1997)
- State v. Poe, 276 Neb. 258, 754 N.W.2d 393 (2008)
- 555 U.S. 1137 (2009)