

NEBRASKA SUPREME COURT

State v. Johnson

310 Neb. 527 (2021) · No. No. S-20-898 · Decided December 10, 2021

SUMMARY

The Nebraska Supreme Court affirmed Charlie R. Johnson’s conviction for bigamy. The court held that a bigamy prosecution may be based on a voidable marriage and concluded that the State presented sufficient evidence that Johnson was married to Petersen when he married Forney. The court also determined that Johnson’s asserted belief that he was legally eligible to remarry was not supported by the evidence.

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	December 10, 2021
DOCKET	No. S-20-898
DISPOSITION	affirmed
PROCEDURAL POSTURE	Johnson was convicted of bigamy in Lancaster County Court and sentenced to 30 days in jail. The Lancaster County District Court affirmed. The Nebraska Supreme Court granted the State's petition to bypass review by the Nebraska Court of Appeals and affirmed the district court's judgment.
STANDARD OF REVIEW	For a criminal appeal from county court, the district court and a higher appellate court generally review for errors appearing on the record. The inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Statutory interpretation is reviewed as a question of law. For sufficiency of the evidence, the court asks whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

PARTIES

Charlie R. Johnson v. State of Nebraska

TOPICS

criminal procedure

marriage

statutory interpretation

appellate procedure

evidence

PRACTICE AREAS

criminal law

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appellate procedure

QUESTIONS PRESENTED

1. Whether a marriage that is voidable, but has not been annulled, can support a prosecution for bigamy under Neb. Rev. Stat. § 28-701(1).
2. Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Johnson was a married person with a living spouse when he married Forney.
3. How the burden of going forward and burden of persuasion operate for the affirmative defense that the accused reasonably believed he was legally eligible to remarry.

HOLDINGS

1. A bigamy prosecution can be based on a voidable marriage. A voidable marriage is treated as valid and binding until a competent court declares it annulled.
2. Johnson's marriage to Petersen was at least voidable and was not shown to be void. The validity of the marriage was governed initially by Texas law because the ceremony occurred there, and Nebraska law also required recognition of an out-of-state marriage valid where contracted.
3. The State presented sufficient evidence for a rational trier of fact to find that Johnson was married to Petersen, that Petersen was living, and that Johnson later married Forney.
4. When a criminal statute does not assign the burden of an affirmative defense, the defendant bears the initial burden of producing enough evidence to raise the defense; once raised, the State must disprove it.

KEY QUOTATIONS

"The question becomes whether a bigamy prosecution may be based on a voidable marriage." (310 Neb. at 538)

"We hold that a bigamy prosecution can be based on a voidable marriage." (310 Neb. at 539)

"Because a voidable marriage is treated as valid until declared otherwise by a court of competent jurisdiction, it will support a bigamy prosecution." (310 Neb. at 542)

FACTUAL BACKGROUND

Johnson and Petersen obtained a Nebraska marriage license and participated in a wedding ceremony in Texas performed by Johnson's sister, an ordained minister. The license was not initially filed, but Johnson and Petersen later signed a replacement license that was filed in Nebraska and identified their marriage as occurring in July

2015. Johnson subsequently married Forney in November 2018 without an intervening divorce from Petersen. Evidence showed that Johnson had referred to Petersen as his wife and, after being told that obtaining a license and participating in the ceremony meant they were married, had not established that he reasonably believed he was legally eligible to remarry.

PROCEDURAL HISTORY

The county court conducted a bench trial based on stipulated exhibits and evidence summaries, convicted Johnson of bigamy, and imposed a 30-day jail sentence. Johnson appealed to the Lancaster County District Court, arguing that the State failed to prove he was a married person because his prior marriage was invalid; the district court affirmed. The Nebraska Supreme Court granted bypass review and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020)
- State v. Thelen, 305 Neb. 334, 940 N.W.2d 259 (2020)
- Baker v. State, 86 Neb. 775, 126 N.W. 300 (1910)
- Collins v. Hoag & Rollins, 122 Neb. 805, 241 N.W. 766 (1932)
- Goodridge v. Department of Public Health, 440 Mass. 309, 798 N.E.2d 941 (2003)
- Rich v. Fulton, 104 Neb. 262, 177 N.W. 175 (1920)
- State v. Gomez, 305 Neb. 222, 939 N.W.2d 763 (2020)
- Christensen v. Christensen, 144 Neb. 763, 14 N.W.2d 613 (1944)
- Randall v. Randall, 216 Neb. 541, 345 N.W.2d 319 (1984)
- Watts v. Watts, 250 Neb. 38, 547 N.W.2d 466 (1996)
- In re Estate of Loveless, 64 S.W.3d 564 (Tex. App. 2001)
- Husband v. Pierce, 800 S.W.2d 661 (Tex. App. 1990)
- Simpson v. Neely, 221 S.W.2d 303 (Tex. App. 1949)
- State v. Grutell, 305 Neb. 843, 943 N.W.2d 258 (2020)
- State v. Howard, 282 Neb. 352, 803 N.W.2d 450 (2011)
- State v. Saylor, 294 Neb. 492, 883 N.W.2d 334 (2016)
- Barnts v. State, 116 Neb. 363, 217 N.W. 591 (1928)
- Staley v. State, 89 Neb. 701, 131 N.W. 1028 (1911)
- Staley v. State, 87 Neb. 539, 127 N.W. 878 (1910)
- Hills v. State, 61 Neb. 589, 85 N.W. 836 (1901)
- Reynolds v. State, 58 Neb. 49, 78 N.W. 483 (1899)
- Beggs v. State, 55 Ala. 108 (1876)

- Barber v. People, 203 Ill. 543, 68 N.E. 93 (1903)
- State v. Yoder, 113 Minn. 503, 130 N.W. 10 (1911)
- State v. Eden, 350 Mo. 932, 169 S.W.2d 342 (1943)
- Ysern v. Horter, 94 N.J. Eq. 135, 118 A. 774 (1922)
- People v. Dunbar, 194 A.D. 144, 184 N.Y.S. 765 (1920)
- State v. Moore, 1 Ohio Dec. Reprint 171 (1845)
- State v. Sellers, 140 S.C. 66, 134 S.E. 873 (1926)
- Smith v. Smith, 224 So. 3d 740 (Fla. 2017)
- Trapasso v. Lewis, 247 Md. App. 577, 239 A.3d 703 (2020)
- Dibble v. Meyer, 203 Or. 541, 278 P.2d 901 (1955)
- Brewer v. Miller, 673 S.W.2d 530 (Tenn. App. 1984)
- Toler v. Oakwood Smokeless Coal Corporation, 173 Va. 425, 4 S.E.2d 364 (1939)
- In re Hollingworth's Estate, 145 Wash. 509, 261 P. 403 (1927)
- Carmichael v. State, 12 Ohio St. 553 (1861)