

NEBRASKA SUPREME COURT

State v. Ebert

303 Neb. 394 (2019) · No. S-18-752 · Decided June 21, 2019

SUMMARY

The Nebraska Supreme Court held that, after criminal proceedings terminate, a person from whom property was seized is presumptively entitled to its return unless the government establishes a legitimate reason to retain it. The court ruled that the State bears the burden of proving superior title by a preponderance of the evidence, reversed the district court's order, and remanded for further proceedings.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	June 21, 2019
DOCKET	S-18-752
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ebert appealed the district court's order partially denying his motion for return of property seized in connection with a dismissed theft charge.
STANDARD OF REVIEW	The denial of a motion for return of seized property is reviewed for abuse of discretion; however, a ruling based on an incorrect allocation of the burden of proof cannot be reviewed under that standard.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion and binding precedent in Nebraska.
PARTIES	Arthur D. Ebert v. State of Nebraska

TOPICS

- search and seizure
- criminal procedure
- presumptions
- evidence
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court applied the correct burden of proof when deciding Ebert's motion for return of property seized after the criminal proceedings terminated.
2. Whether the State must prove by a preponderance of the evidence that another party has superior title to overcome the seized person's presumptive right to possession.
3. Whether the denial of Ebert's motion should be reversed and remanded because the district court improperly required Ebert to prove ownership.

HOLDINGS

1. After criminal proceedings terminate and the State no longer needs the property as evidence, the person from whom noncontraband property was seized is presumptively entitled to its return. The burden rests on the government to establish a legitimate reason to retain the property or superior title in another party.
2. The presumptive right to possession of seized property may be overcome when another party's superior title is shown by a preponderance of the evidence.
3. The district court's order must be reversed and the matter remanded because it required Ebert to prove ownership rather than requiring the State to prove superior title or another legitimate basis for retaining the property.

KEY QUOTATIONS

“When criminal proceedings have terminated, the person from whom property was seized is presumed to have a right to its return, and the burden is on the government to show that it has a legitimate reason to retain the property.” (303 Neb. at 400-401)

“We have consistently said that the seizure of property from someone is prima facie evidence of that person’s right to possession, and we now hold that the presumptive right to possession of seized property may be overcome when superior title in another is shown by a preponderance of the evidence.” (303 Neb. at 403)

“It was error as a matter of law to require Ebert, as the proponent of a motion seeking the return of property seized from him, to prove ownership of the property seized.” (303 Neb. at 403)

FACTUAL BACKGROUND

The State seized tools and other personal property from Arthur Ebert in connection with a theft charge alleging that he controlled property belonging to his former employer, 3D Metal. The theft charge was dismissed as part of a plea agreement in a separate criminal case, after which Ebert sought return of five items. Ebert claimed he owned the items, while a 3D Metal supervisor testified that some resembled tools missing from the employer but acknowledged that the items were common and could not be specifically identified as 3D Metal's property.

PROCEDURAL HISTORY

After the State dismissed the theft-by-unlawful-taking charge pursuant to a plea agreement in a separate criminal case, Ebert moved for return of property seized from his vehicle. Following an evidentiary hearing, the Stanton County District Court ordered some property returned to Ebert and other property returned to his former employer, 3D Metal. Ebert timely appealed, and the Nebraska Supreme Court moved the case to its docket on its own motion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct further proceedings applying the correct burden of proof: Ebert is presumptively entitled to return of the seized property, and the State must prove by a preponderance of the evidence that another party has superior title or that another legitimate basis exists to retain the property.

CASES CITED

- State v. McGuire, 301 Neb. 895, 921 N.W.2d 77 (2018)
- State v. Agee, 274 Neb. 445, 741 N.W.2d 161 (2007)
- State v. Taylor, 286 Neb. 966, 840 N.W.2d 526 (2013)
- State v. Bain, 292 Neb. 398, 872 N.W.2d 777 (2015)
- State v. Card, 48 Wash. App. 781, 741 P.2d 65 (1987)
- DeLoge v. State, 156 P.3d 1004 (Wyo. 2007)