

NEBRASKA SUPREME COURT

State v. Degarmo

305 Neb. 680 (2020) · No. S-19-015 · Decided May 1, 2020

SUMMARY

The Nebraska Supreme Court held that David E. Degarmo voluntarily consented to a warrantless urine search during a drug recognition evaluation following his arrest for driving under the influence. Applying the totality-of-the-circumstances test, the court concluded that informing Degarmo of his right to refuse and stating that officers would seek a warrant if he refused did not constitute coercion, and it affirmed the denial of his motion to suppress.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 1, 2020
DOCKET	S-19-015
DISPOSITION	affirmed
PROCEDURAL POSTURE	Degarmo appealed his convictions and the admission of a warrantless urine-test result. The Lancaster County District Court, acting as an intermediate appellate court, affirmed the county court's denial of his motion to suppress. The Nebraska Supreme Court granted his petition to bypass the Court of Appeals.
STANDARD OF REVIEW	For a Fourth Amendment suppression ruling, historical facts are reviewed for clear error, while whether those facts trigger or violate Fourth Amendment protections is reviewed independently as a question of law. The same two-part standard applies to the voluntariness of consent; where the facts are largely undisputed, voluntariness is an issue of law reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	David E. Degarmo v. State of Nebraska

TOPICS

suppression of evidence

fourth amendment

search and seizure

warrant requirement

appellate procedure

PRACTICE AREAS

criminal procedure

constitutional law

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QUESTIONS PRESENTED

1. Whether the trial court erred in denying Degarmo's motion to suppress the results of the warrantless urine test on the ground that his consent was involuntary under the Fourth and Fourteenth Amendments and article I, § 7, of the Nebraska Constitution.
2. Whether the circumstances of Degarmo's arrest, detention, drug recognition evaluation, and the advisement that police would seek a warrant if he refused rendered his written consent coerced.

HOLDINGS

1. Degarmo voluntarily consented to the warrantless search of his urine. The consent was a free and unconstrained choice rather than the product of express, implied, physical, or psychological coercion.
2. Because Degarmo voluntarily consented to the urine search, the warrantless search fell within the consent exception to the Fourth Amendment warrant requirement, and the urine-test results were admissible.

KEY QUOTATIONS

“Generally, to be effective under the Fourth Amendment, consent to a search must be a free and unconstrained choice, and not the product of a will overborne.” (at 689)

“While there is no requirement that police must always inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search, knowledge of the right to refuse is a factor to be considered in the voluntariness analysis.” (at 691)

“Having considered the totality of the circumstances, we determine Degarmo’s written consent to the warrantless search of his urine was voluntary and not coerced.” (at 692)

FACTUAL BACKGROUND

A Lancaster County deputy stopped Degarmo for expired registration and observed the odor and other signs of recent marijuana use. After field sobriety testing, the deputy arrested Degarmo for driving under the influence and conducted a drug recognition evaluation at a detoxification center. Following the evaluation, the deputy read Degarmo a consent-to-search form advising him of his right to refuse a warrantless urine search and stating that officers would seek a warrant if he refused. Degarmo signed the form and provided a urine sample, which tested positive for a marijuana metabolite.

PROCEDURAL HISTORY

The Lancaster County County Court denied Degarmo's motion to suppress the urine-test results and proceeded to a jury trial, which resulted in convictions for driving under the influence, possession of one ounce or less of

marijuana, and possession of drug paraphernalia. The Lancaster County District Court affirmed. The Nebraska Supreme Court affirmed the district court's judgment, holding that Degarmo voluntarily consented to the warrantless urine search.

DISPOSITION

affirmed

CASES CITED

- Birchfield v. North Dakota, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016)
- State v. Daly, 278 Neb. 903, 775 N.W.2d 47 (2009)
- State v. Hatfield, 304 Neb. 66, 933 N.W.2d 78 (2019)
- State v. Brye, 304 Neb. 498, 935 N.W.2d 438 (2019)
- State v. Schrinier, 303 Neb. 476, 929 N.W.2d 514 (2019)
- Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989)
- Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)
- State v. Garcia, 302 Neb. 406, 923 N.W.2d 725 (2019)
- State v. Hoerle, 297 Neb. 840, 901 N.W.2d 327 (2017)
- United States v. Drayton, 536 U.S. 194, 122 S. Ct. 2105, 153 L. Ed. 2d 242 (2002)
- State v. Tucker, 262 Neb. 940, 636 N.W.2d 853 (2001)
- United States v. Watson, 423 U.S. 411, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976)
- State v. Christianson, 217 Neb. 445, 348 N.W.2d 895 (1984)