

SUPREME COURT OF NEBRASKA

State v. Burries

297 Neb. 367 (2017) · No. No. S-15-1008 · Decided August 4, 2017

SUMMARY

The Nebraska Supreme Court affirmed Anthony L. Burries’ convictions and sentence for premeditated first degree murder. The opinion addresses Miranda waivers, ineffective assistance of counsel, admissibility of inconclusive DNA evidence, other-acts and hearsay evidence, authentication, preservation of evidentiary objections, and harmless error.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.
JURISDICTION	Nebraska
DECIDED	August 4, 2017
DOCKET	No. S-15-1008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a jury conviction for premeditated first degree murder and sentence of life imprisonment.
STANDARD OF REVIEW	Questions of law are reviewed independently. Historical findings concerning voluntariness and invocation of rights are reviewed for clear error, with constitutional application reviewed independently. Evidentiary rulings involving relevance, unfair prejudice, foundation, other acts, and discretionary admissibility are reviewed for abuse of discretion; when discretion is not implicated, admissibility is reviewed de novo. Hearsay factual findings are reviewed for clear error and the ultimate hearsay determination de novo. Ineffective-assistance claims on direct appeal present questions of law and are considered only when the record is sufficient. Preserved constitutional trial error is reviewed for harmlessness beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Anthony L. Burries v. State of Nebraska

TOPICS

miranda rights right to counsel ineffective assistance evidence hearsay

PRACTICE AREAS

criminal law criminal procedure evidence constitutional law ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether Burries knowingly and voluntarily waived his Miranda right to counsel when he made incriminating statements to investigators.
2. Whether trial counsel was ineffective for failing to seek suppression of Burries' statements.
3. Whether inconclusive DNA evidence was irrelevant or misleading and whether counsel's failure to object or counsel's cross-examination prejudiced Burries.
4. Whether the record was sufficient to decide Burries' remaining ineffective-assistance claims on direct appeal.
5. Whether evidence of Burries' 2012 assault of Hoult and his threats toward her was admissible as inextricably intertwined evidence rather than impermissible propensity evidence.
6. Whether the threatening letter to a State witness was properly admitted and whether the court's Rule 404(2) instruction was erroneous.
7. Whether testimony concerning telephone threats and Hoult's statements was properly authenticated and admissible under the excited-utterance exception.
8. Whether Burries preserved objections to other testimony after the denial of motions in limine.
9. Whether the erroneous admission and instruction concerning the threatening letter required reversal.

HOLDINGS

1. Burries knowingly, intelligently, and voluntarily waived his right to counsel to the extent that he answered investigators' questions after receiving adequate Miranda warnings. His later unequivocal request to speak with an attorney properly terminated the questioning, but did not invalidate his earlier waiver.
2. Trial counsel was not ineffective for failing to seek suppression because the suppression argument lacked merit.
3. The DNA testimony was functionally inconclusive and irrelevant because it did not tend to include or exclude Burries as the source of the DNA, but counsel's failure to object and cross-examination did not prejudice Burries.
4. The court would not address ineffective-assistance claims concerning counsel's alleged failure to investigate and present numerous sources of favorable evidence because the appellate record was insufficient and an evidentiary hearing would be required.

5. Evidence of Burries' 2012 assault of Hoult and related threats was admissible as inextricably intertwined evidence because it formed part of the factual setting and was necessary to present a coherent picture of the charged murder.
6. The trial court erred by admitting Burries' threatening letter to Howard under Rule 404(2) without identifying the specific permissible purpose and by giving a nonspecific limiting instruction, but the error was harmless beyond a reasonable doubt.
7. The trial court properly admitted evidence identifying Burries as the caller through circumstantial evidence and properly admitted Hoult's statements to Robinson as excited utterances.
8. Burries failed to preserve objections to testimony concerning Coburn's statements and another neighbor's testimony because he did not renew his objections when the evidence was offered at trial.

KEY QUOTATIONS

"We conclude that the court did not err in determining that Burries voluntarily and intelligently waived his right to counsel when he answered Cahill's questions, despite understanding his right to terminate the questioning until he obtained an attorney." (at 393)

"A DNA expert's testimony that there may have been a minor contributor's DNA in a biological sample is irrelevant evidence because it is not probative of the source of the DNA." (at 397)

"Under this precedent, evidence of a murder defendant's previous threat to the victim or statement to others showing a desire to harm or kill the victim are facts that are inextricably intertwined with the charged murder if the defendant made the threat or statement fairly close in time to the murder." (at 407-408)

"The requirement that the trial court state on the record the purpose or purposes for which such evidence is received is primarily to ensure that an appellate court can review the trial court's ruling." (at 413)

"Given the strength of the State's properly admitted evidence, we conclude that the jury's guilty verdict was surely unattributable to the court's error." (at 421)

FACTUAL BACKGROUND

Tina Hoult was found dead in her Omaha apartment after suffering at least nine blows to the head. Evidence showed that Burries, Hoult's longtime on-and-off boyfriend, had threatened and assaulted her in the past, sent threatening text messages shortly before the killing, went to her apartment with the assistance of another woman, and thereafter burned clothing, attempted to conceal his movements, and threatened the driver who transported him. After his arrest in Missouri, Burries received Miranda warnings, answered questions, admitted burning clothing, and terminated the interview when investigators confronted him with evidence placing him at Hoult's apartment. At trial, the State introduced evidence concerning Burries' prior assault and threats, inconclusive DNA testing, witness statements, and a threatening letter to the driver.

PROCEDURAL HISTORY

A jury found Burries guilty of premeditated first degree murder for killing Tina Hoult, and the Douglas County District Court sentenced him to life imprisonment. On direct appeal, Burries challenged the admission of his statements to investigators, other-acts and hearsay evidence, DNA evidence, and a letter threatening a witness,

and asserted several ineffective-assistance claims. The Nebraska Supreme Court held that one evidentiary ruling was erroneous but harmless, declined to address ineffective-assistance claims requiring an evidentiary hearing, and affirmed.

DISPOSITION

affirmed

CASES CITED

- *Miranda v. Arizona*, 384 U.S. 436 (1966)
- *Berghuis v. Thompson*, 560 U.S. 370 (2010)
- *Patterson v. Illinois*, 487 U.S. 285 (1988)
- *State v. Johnson*, 290 Neb. 862, 862 N.W.2d 757 (2015)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *State v. Perrigo*, 244 Neb. 990, 510 N.W.2d 304 (1994)
- *State v. Parnell*, 294 Neb. 551, 883 N.W.2d 652 (2016)
- *State v. Clancy*, 224 Neb. 492, 398 N.W.2d 710 (1987)
- *State v. Sanchez*, 257 Neb. 291, 597 N.W.2d 361 (1999)
- *State v. McSwain*, 194 Neb. 31, 229 N.W.2d 562 (1975)
- *State v. Huston*, 285 Neb. 11, 824 N.W.2d 724 (2013)
- *State v. Bjorklund*, 258 Neb. 432, 604 N.W.2d 169 (2000)

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