

SUPREME COURT OF NEBRASKA

State v. Munoz

303 Neb. 69 (2019) · No. No. S-18-050 · Decided May 10, 2019

SUMMARY

The Nebraska Supreme Court affirmed Lucio P. Munoz’s convictions for first degree murder and use of a deadly weapon to commit a felony. The court rejected claims of plain error based on alleged prosecutorial misconduct and a witness’s assertion of the Fifth Amendment privilege in the jury’s presence. It also rejected ineffective-assistance claims concerning trial counsel’s failure to object to the prosecutor’s opening statement, the privilege assertion, and blood-spatter evidence.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 10, 2019
DOCKET	No. S-18-050
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for first degree murder and use of a deadly weapon to commit a felony.
STANDARD OF REVIEW	Plain error may be found when an unasserted trial error is plainly evident from the record, prejudicially affects a substantial right, and, if uncorrected, would damage the integrity, reputation, and fairness of the judicial process. Whether an ineffective-assistance claim can be resolved on direct appeal is a question of law; the appellate court considers whether the undisputed record is sufficient to conclusively determine deficient performance and prejudice. Relevance and unfair-prejudice evidentiary rulings are evaluated under Nebraska Evidence Rules 401 and 403.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Lucio P. Munoz v. State of Nebraska

TOPICS

appellate procedure

preservation of error

ineffective assistance

prosecutorial misconduct

evidence

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the prosecutor's opening statement concerning the missing murder weapon and clothing constituted prosecutorial misconduct and plain error.
2. Whether the trial court committed plain error by permitting a witness to invoke the Fifth Amendment privilege in the jury's presence.
3. Whether trial counsel was ineffective for failing to object to the prosecutor's opening statement.
4. Whether trial counsel was ineffective for failing to demand compliance with Neb. Evid. R. 513(2) concerning the witness's privilege invocation.
5. Whether trial counsel was ineffective for failing to challenge blood-spatter evidence as irrelevant and unfairly prejudicial.
6. Whether additional ineffective-assistance claims not specifically assigned as error could be considered on direct appeal.

HOLDINGS

1. An alleged error must be both specifically assigned and specifically argued, and an ineffective-assistance assignment on direct appeal must specifically allege deficient performance. The court therefore declined to consider additional ineffective-assistance matters that were argued but not assigned as error.
2. The prosecutor's statements that the murder weapon and blood-stained clothing were not found did not constitute prosecutorial misconduct and therefore did not amount to plain error.
3. The record did not establish plain error when Brady invoked his Fifth Amendment privilege in the jury's presence and was then granted immunity and required to testify.
4. Counsel was not ineffective for failing to object because the prosecutor's opening statement did not constitute misconduct and an objection would have had no valid basis.
5. Counsel was not ineffective because Munoz could not establish prejudice from the failure to require that Brady invoke the privilege outside the jury's presence.
6. Counsel was not ineffective for failing to object to the blood-spatter evidence as irrelevant because the evidence met Nebraska's low threshold for relevance.
7. Counsel was not ineffective for failing to object under Neb. Evid. R. 403 because the blood-spatter evidence was not shown to have probative value substantially outweighed by unfair prejudice.

KEY QUOTATIONS

"An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error to be considered by an appellate court." (69)

“The bill of exceptions does not contain evidence showing that the parties or the court knew Brady would invoke his privilege.” (79)

“We therefore affirm the judgment of the district court.” (84)

FACTUAL BACKGROUND

Munoz reported that his girlfriend, Melissa May, had been raped and later made statements suggesting that something had happened. May was subsequently found dead in Munoz's apartment with 37 stab wounds. Munoz left Nebraska shortly after the killing and was later transported back from Illinois. At trial, the State presented evidence concerning the missing murder weapon and clothing, a witness's assertion of Fifth Amendment privilege, and expert testimony interpreting blood-spatter patterns.

PROCEDURAL HISTORY

A jury convicted Munoz of first degree murder and use of a deadly weapon to commit a felony. The district court sentenced him to life imprisonment for murder and 20 to 40 years' imprisonment for the weapon conviction. Munoz appealed, asserting plain error and ineffective assistance of trial counsel based on the prosecutor's opening statement, a witness's invocation of the Fifth Amendment in the jury's presence, and blood-spatter evidence. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Sundquist, 301 Neb. 1006, 921 N.W.2d 131 (2019)
- State v. Mrza, 302 Neb. 931 (2019)
- State v. Trice, 292 Neb. 482, 874 N.W.2d 286 (2016)
- State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018)
- State v. Taylor, 300 Neb. 629, 915 N.W.2d 568 (2018)
- State v. Draper, 289 Neb. 777, 857 N.W.2d 334 (2015)
- State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018)
- State v. Avina-Murillo, 301 Neb. 185, 917 N.W.2d 865 (2018)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Brown, 302 Neb. 53, 921 N.W.2d 804 (2019)
- State v. Jenkins, 294 Neb. 684, 884 N.W.2d 429 (2016)
- State v. Freemont, 284 Neb. 179, 817 N.W.2d 277 (2012)