

NEBRASKA SUPREME COURT

State v. Brown

310 Neb. 318 (2021) · No. No. S-21-112 · Decided October 22, 2021

SUMMARY

The Nebraska Supreme Court reviewed the denial of Rolander L. Brown’s motion for a new trial based on allegedly newly discovered evidence. The court held that the district court did not abuse its discretion in finding the proposed eyewitness testimony lacked credibility and would not probably have produced a different verdict. The court affirmed and did not address the State’s cross-appeal.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	October 22, 2021
DOCKET	No. S-21-112
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brown appealed the denial, after an evidentiary hearing, of his motion for a new trial based on newly discovered evidence. The State filed a cross-appeal concerning the sufficiency of the motion and the district court's finding that the evidence was newly discovered.
STANDARD OF REVIEW	The denial of a motion for new trial after an evidentiary hearing is reviewed for abuse of discretion. An abuse of discretion occurs when the decision rests on untenable or unreasonable reasons or is clearly against justice, conscience, reason, or evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Rolander L. Brown v. State of Nebraska

TOPICS

- post-conviction relief
- criminal procedure
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Brown's motion for a new trial based on newly discovered evidence.
2. Whether the newly discovered evidence satisfied the materiality and probable-different-verdict requirements of Neb. Rev. Stat. § 29-2101(5).
3. Whether the State's cross-appeal concerning dismissal of the motion and the newly discovered nature of the evidence needed to be decided.

HOLDINGS

1. A trial court's denial of a motion for a new trial after an evidentiary hearing is reviewed for abuse of discretion.
2. Under Neb. Rev. Stat. § 29-2101(5), a defendant seeking a new trial must show both that the evidence could not, with reasonable diligence, have been discovered and produced at trial and that the evidence is sufficiently substantial that a different verdict probably would have resulted.
3. Newly discovered evidence that lacks credibility cannot satisfy the requirement that the evidence would probably have produced a substantially different result at trial.
4. Appellate courts do not reassess witness credibility; credibility determinations are matters for the finder of fact.

KEY QUOTATIONS

“First, a criminal defendant must show that the evidence at issue has been newly discovered since trial, meaning that the evidence could not, with reasonable diligence, have been discovered and produced at trial. Second, the defendant also must show that the evidence at issue is so substantial that with it, a different verdict would probably have been reached at trial.” (at 326)

“Appellate courts do not pass on the credibility of witnesses. Witness credibility is a matter for the finder of fact and is not to be reassessed on appellate review.” (at 328)

FACTUAL BACKGROUND

Brown was convicted of killing Carlos Alonzo, who was found with a single gunshot wound near the residence of Doloma Curtis. Trial evidence included surveillance footage showing a man leaving a sedan with a missing front passenger-side hubcap, cell-site evidence placing Brown's phone near the scene, and testimony that Brown said he had to “put [Alonzo] down.” After trial, Curtis gave a new account asserting that her brother, LeRoy Long, was present with a handgun and that Brown was also at the scene but declined to help. The district court found Curtis's account not credible because she had repeatedly withheld the information, admitted lying to police, and was biased toward Brown.

PROCEDURAL HISTORY

Brown was convicted by a jury of second degree murder, use of a firearm to commit a felony, and possession of a firearm by a prohibited person, and received aggregate sentences of 100 to 140 years' imprisonment. The Nebraska Supreme Court affirmed those convictions and sentences on direct appeal. Brown later moved for a new trial under Neb. Rev. Stat. § 29-2101(5), asserting that a witness's changed account implicated another person in the killing. After an evidentiary hearing, the district court found the evidence undiscoverable with reasonable diligence but not credible or sufficiently likely to change the verdict, and denied the motion. The Supreme Court affirmed and declined to address the State's cross-appeal because it was unnecessary to the disposition.

DISPOSITION

affirmed

CASES CITED

- State v. Brown, 302 Neb. 53, 921 N.W.2d 804 (2019)
- State v. Bartel, 308 Neb. 169, 953 N.W.2d 224 (2021)
- State v. McCormick, 246 Neb. 271, 518 N.W.2d 133 (1994)
- State v. Thomas, 262 Neb. 985, 637 N.W.2d 632 (2002)
- State v. Costello, 199 Neb. 43, 256 N.W.2d 97 (1977)
- State v. Seger, 191 Neb. 760, 217 N.W.2d 828 (1974)
- State v. Rosales, 3 Neb. App. 26, 521 N.W.2d 385 (1994)
- State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021)
- State v. Wheeler, 308 Neb. 708, 956 N.W.2d 708 (2021)
- State v. Faust, 269 Neb. 749, 696 N.W.2d 420 (2005)
- Preserve the Sandhills v. Cherry County, ante p. 184, ___ N.W.2d ___ (2021)

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