

SUPREME COURT OF NEBRASKA

State v. Madren

308 Neb. 443 (2021) · No. No. S-19-240 · Decided February 19, 2021

SUMMARY

The Nebraska Supreme Court considered whether a trial court erred by denying motions for mistrial and new trial after an alternate juror remained with the jury during approximately the first hour of deliberations. The court reaffirmed that the alternate juror’s presence violates the defendant’s constitutional right to a fair and impartial jury but creates a rebuttable presumption of prejudice rather than prejudice per se. Because the defendant’s motion for new trial alleged facts materially affecting a substantial right, the trial court was required to conduct an evidentiary hearing to determine whether the presumption of prejudice was rebutted.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	February 19, 2021
DOCKET	No. S-19-240
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for further review from the Nebraska Court of Appeals' affirmance of the district court's denial of Madren's motions for mistrial and new trial following his first degree sexual assault conviction.
STANDARD OF REVIEW	Mistrial decisions are reviewed for abuse of discretion. Dismissal of a motion for new trial under Neb. Rev. Stat. § 29-2102(2) without an evidentiary hearing is reviewed de novo; denial after an evidentiary hearing is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	James M. Madren v. State of Nebraska

TOPICS

criminal procedure

sixth amendment

harmless error

appellate procedure

standard of review

PRACTICE AREAS

criminal procedure

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evidence

QUESTIONS PRESENTED

1. Whether the unauthorized presence of an alternate juror during jury deliberations violated Madren's constitutional right to a fair and impartial jury.
2. Whether the presence of the alternate created a rebuttable presumption of prejudice subject to harmless-error analysis or required reversal per se.
3. Whether the district court was required under Neb. Rev. Stat. § 29-2102(2) to conduct an evidentiary hearing on Madren's motion for a new trial.
4. Whether the district court's instruction that the jury begin deliberations anew adequately cured the violation without an evidentiary hearing.

HOLDINGS

1. The presence of an alternate juror during the deliberations of the 12 regular jurors violates the defendant's federal and state constitutional rights to a fair and impartial trial.
2. The unauthorized presence of an alternate juror during deliberations creates a rebuttable presumption of prejudice subject to harmless-error analysis; it does not require reversal per se.
3. When a motion for new trial and supporting documents allege facts that, if true, would materially affect the defendant's substantial rights, Neb. Rev. Stat. § 29-2102(2) imposes a mandatory duty on the district court to conduct an evidentiary hearing and make findings of fact and law.
4. An instruction directing the jury to begin deliberations anew does not eliminate the district court's duty to conduct an evidentiary hearing when an alternate juror was mistakenly permitted to participate in deliberations and the extent of the alternate's influence is unknown.

KEY QUOTATIONS

“We reaffirm that under the statutory scheme for alternates controlling at the time of Madren’s trial, the presence of an alternate juror in jury deliberations is a constitutional violation of the right to a fair and impartial trial that merely creates a rebuttable presumption of prejudice for purposes of a harmless error analysis.” (453-454)

“The district court’s general request to the jury, that any of its members should “please let me know” if, in reaching the verdict, they “consider[ed] any of the conversations or participation” of the alternate juror while she was with them in the jury room, was not an adequate replacement for individualized questioning of whether the jurors were influenced.” (457)

“Such an instruction is not a panacea for every violation of the sanctity of juror deliberations.” (457-458)

FACTUAL BACKGROUND

After the parties rested and the case was submitted to the jury, an alternate juror remained in the jury room with the 12 regular jurors for approximately one hour of deliberations because the district court mistakenly failed to discharge her. The court removed the alternate and instructed the jury to start deliberations from scratch, but did not inquire into the alternate's communications or participation. After the guilty verdict, the court denied Madren's motion for a new trial without permitting an evidentiary hearing or allowing him to obtain an affidavit from the alternate.

PROCEDURAL HISTORY

Madren was convicted by a jury of first degree sexual assault and sentenced to 30 to 38 years' imprisonment. During the first hour of jury deliberations, the district court mistakenly failed to discharge an alternate juror. The court removed the alternate and instructed the jury to begin deliberations anew, but denied Madren's motions for mistrial and new trial without conducting an evidentiary hearing. The Nebraska Court of Appeals affirmed, and the Nebraska Supreme Court granted further review, reversed, and remanded for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of the Nebraska Court of Appeals and remand with directions to remand the matter to the district court for the mandated evidentiary hearing under Neb. Rev. Stat. § 29-2102(2), addressing the extent and nature of the alternate juror's communications and participation and whether Madren was prejudiced. The district court may establish procedures to protect the integrity of the proceedings.

CASES CITED

- State v. Briggs, 303 Neb. 352, 929 N.W.2d 65 (2019)
- State v. Senteney, 307 Neb. 702, 950 N.W.2d 585 (2020)
- State v. Cross, 297 Neb. 154, 900 N.W.2d 1 (2017)
- State v. Menuey, 239 Neb. 513, 476 N.W.2d 846 (1991)
- Bramlett v. State, 129 Neb. 180, 261 N.W. 166 (1935)
- State v. Barranco, 278 Neb. 165, 769 N.W.2d 343 (2009)
- United States v. Beasley, 464 F.2d 468 (10th Cir. 1972)
- Stokes v. State, 379 Md. 618, 843 A.2d 64 (2004)
- Commonwealth v. Smith, 403 Mass. 489, 531 N.E.2d 556 (1988)
- State v. Bindyke, 288 N.C. 608, 220 S.E.2d 521 (1975)
- Brigman v. State, 350 P.2d 321 (Okla. Crim. App. 1960)
- Commonwealth v. Krick, 164 Pa. Super. 516, 67 A.2d 746 (1949)
- Bouey v. State, 762 So. 2d 537 (Fla. App. 2000)
- State v. Anderson, 252 Neb. 675, 564 N.W.2d 581 (1997)

- State v. LeBron, 217 Neb. 452, 349 N.W.2d 918 (1984)
- Simants v. State, 202 Neb. 828, 277 N.W.2d 217 (1979)
- State v. Robinson, 198 Neb. 785, 255 N.W.2d 835 (1977)
- Cooney v. State, 61 Neb. 342, 85 N.W. 281 (1901)
- Gandy v. State, 24 Neb. 716, 40 N.W. 302 (1888)
- State v. Owen, 1 Neb. App. 1060, 510 N.W.2d 503 (1993)
- Zeeb v. Delicious Foods, 231 Neb. 358, 436 N.W.2d 190 (1989)
- State v. Myers, 258 Neb. 272, 603 N.W.2d 390 (1999)
- State v. Hudson, 268 Neb. 151, 680 N.W.2d 603 (2004)
- Flores v. Flores-Guerrero, 290 Neb. 248, 859 N.W.2d 578 (2015)
- State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000)
- State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008)

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