

SUPREME COURT OF NEBRASKA

State v. Eberly

271 Neb. 893 (2006) · No. No. S-05-1008 · Decided June 30, 2006

SUMMARY

The Nebraska Supreme Court affirmed Grant Eberly's conviction for possessing a controlled substance with intent to deliver. The court held that police officers' warrantless entry into his home was justified under the emergency doctrine because, after a reported burglary and loud bang, they could reasonably believe that an injured person or suspect might remain inside. The marijuana observed during the entry properly supported the subsequent search warrant, and the seized evidence was admissible.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Hendry, C.J.; Wright, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	June 30, 2006
DOCKET	No. S-05-1008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Eberly appealed his conviction and sentence after the district court denied his motion to suppress evidence discovered following officers' warrantless entry into his home under the emergency doctrine.
STANDARD OF REVIEW	Historical findings on a motion to suppress are reviewed for clear error; the ultimate determination whether those facts establish probable cause or exigent circumstances is reviewed de novo under the two-stage approach of Ornelas v. United States.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Nebraska; precedential.
PARTIES	Grant Eberly v. State of Nebraska

TOPICS

- fourth amendment
- search and seizure
- warrant requirement
- suppression of evidence
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the officers' warrantless entry into Eberly's home violated the Fourth Amendment or article I, § 7, of the Nebraska Constitution.
2. Whether the emergency doctrine justified the warrantless entry based on the reported recent burglary, forced entry, loud bang, and uncertainty about whether victims or suspects remained inside.
3. Whether information obtained during the entry could be included in the subsequent search-warrant affidavit and support admission of the seized evidence.

HOLDINGS

1. The emergency doctrine justified the warrantless entry because the State proved that, viewed objectively, the officers had reasonable grounds to believe an emergency existed and that immediate entry was necessary to determine whether victims or suspects remained inside.
2. An officer's subjective motivation to arrest or seize evidence is irrelevant to whether the warrantless entry was reasonable under the Fourth Amendment; the emergency doctrine is evaluated under an objective standard.
3. Because the initial entry was lawful under the emergency doctrine, the officers' observations could properly be used in obtaining the search warrant, and the evidence seized under that warrant was properly admitted.

KEY QUOTATIONS

"An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances viewed, objectively, justify [the] action.'" (271 Neb. at 899)

"Because the presence of an emergency, like probable cause, hinges on the reasonable belief of the officers in light of specific facts and the inferences derived therefrom, we must focus on whether Cue and Nichols could have objectively believed an emergency existed, not whether, in hindsight, one actually existed." (271 Neb. at 900)

FACTUAL BACKGROUND

Neighbors reported a burglary at a residence shared by Eberly and two roommates after seeing a man near the back door, hearing a loud bang, and seeing two men flee with a white bag. Police found the back door forced open, announced themselves repeatedly, and received no response. They entered to determine whether suspects or injured occupants remained, found a marijuana-growing operation, obtained a search warrant, and seized the contraband.

PROCEDURAL HISTORY

Police entered Eberly's residence without a warrant after receiving a report of a recent burglary, observing a forced door, and hearing that a loud bang had occurred. They observed a marijuana-growing operation, obtained

a search warrant, and seized the marijuana. The district court denied suppression, convicted Eberly of possessing a controlled substance with intent to deliver, and sentenced him to two years' probation. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ball, ante p. 140, 710 N.W.2d 592 (2006)
- U.S. v. Ball, 90 F.3d 260, 262 (8th Cir. 1996)
- Ornelas v. United States, 517 U.S. 690, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996)
- State v. Voichahoske, ante p. 64, 709 N.W.2d 659 (2006)
- Steagald v. United States, 451 U.S. 204, 211, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981)
- Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980)
- State v. Plant, 236 Neb. 317, 461 N.W.2d 253 (1990)
- State v. Resler, 209 Neb. 249, 306 N.W.2d 918 (1981)
- U.S. v. Tibolt, 72 F.3d 965, 969 (1st Cir. 1995)
- Minnesota v. Olson, 495 U.S. 91, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990)
- Brigham City, Utah v. Stuart, 126 S. Ct. 1943 (2006)
- State v. Illig, 237 Neb. 598, 467 N.W.2d 375 (1991)
- Williams v. Jaglowski, 269 F.3d 778 (7th Cir. 2001)
- People v. Berow, 688 P.2d 1123 (Colo. 1984)
- State v. Bakke, 44 Wash. App. 830, 723 P.2d 534 (1986)
- Com. v. Fiore, 9 Mass. App. 618, 403 N.E.2d 953 (1980)
- United States v. Barone, 330 F.2d 543 (2d Cir. 1964)
- White v. White, ante p. 43, 709 N.W.2d 325 (2006)

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