

NEBRASKA SUPREME COURT

State of Nebraska v. Roy L. Ellis

State v. Ellis, 311 Neb. 862 (2022) · No. No. S-21-595 · Decided June 24, 2022

SUMMARY

The Nebraska Supreme Court affirmed the denial of Roy L. Ellis's motion for postconviction relief following his conviction and death sentence for first degree murder. Ellis alleged that trial counsel was ineffective in challenging the admissibility and weight of DNA evidence, particularly the probability statistic associated with a mixed DNA sample. The court held that counsel's decisions were reasonable and that Ellis failed to establish deficient performance or prejudice under Strickland v. Washington.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Papik, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Doyle, District Judge; Dobrovolny, District Judge
JURISDICTION	Nebraska
DECIDED	June 24, 2022
DOCKET	No. S-21-595
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a motion for postconviction relief following an evidentiary hearing. Ellis alleged that his trial attorneys were ineffective in challenging the admissibility and weight of DNA evidence.
STANDARD OF REVIEW	After an evidentiary hearing on postconviction relief, factual findings are reviewed for clear error. Ineffective-assistance claims present mixed questions of law and fact: factual findings are reviewed for clear error, while counsel-performance and prejudice determinations under Strickland are reviewed independently.
PRECEDENTIAL VALUE	Published, precedential Nebraska Supreme Court opinion
PARTIES	Roy L. Ellis v. State of Nebraska

TOPICS

- state post-conviction relief
- ineffective assistance
- expert testimony
- evidence
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

ineffective assistance of counsel

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to challenge the admissibility of the DNA evidence based on the relative strength of its probability statistic.
2. Whether trial counsel was ineffective for failing to retain or present a defense DNA expert to explain the alleged weakness of the statistical analysis and to challenge the weight of the DNA evidence.

HOLDINGS

1. Counsel did not perform deficiently by declining to challenge admissibility on the ground that the DNA probability statistic was relatively modest. The decision to seek admission of the evidence while challenging its weight was a reasonable trial strategy, and Ellis therefore failed to satisfy Strickland's performance prong.
2. Ellis failed to establish ineffective assistance concerning counsel's treatment of the DNA probability statistic after it was admitted. The record supported a reasonable strategy of minimizing the evidence's weight, and Ellis identified neither the proposed expert testimony nor an expert who would have improved the defense. He also failed to show a substantial likelihood of a different result.
3. Postconviction relief is narrowly available to remedy prejudicial constitutional violations that render a judgment void or voidable.

KEY QUOTATIONS

"When reviewing claims of alleged ineffective assistance of counsel, strategic decisions made by trial counsel will not be second-guessed so long as those decisions are reasonable." (875)

"Without specifying what such expert testimony would have been or who would have provided it, Ellis cannot establish that his trial attorneys were deficient for not retaining an expert to guide his defense or to testify." (877)

FACTUAL BACKGROUND

DNA resembling a handprint was found in a mixture on the bloodied jeans of Amber Harris, a twelve-year-old girl who disappeared and was later found dead from blunt-force head trauma. Ellis could not be excluded as a contributor, and the State's expert testified that approximately one in 2.3 billion people would be expected to fit the mixture as the other contributor. Ellis's trial counsel challenged the DNA testing generally, cross-examined the State's experts, and later relied on a strategy of minimizing the evidence's weight rather than seeking to exclude it. Counsel retained a defense DNA expert, but that expert did not identify problems with the State's statistical analysis and was not called to testify.

PROCEDURAL HISTORY

Ellis was convicted of first degree murder and sentenced to death. The Nebraska Supreme Court affirmed his conviction and sentence on direct appeal, while finding that DNA evidence was admissible and that the erroneous admission of other-acts evidence was harmless. Ellis later filed a postconviction motion alleging ineffective assistance concerning the State's DNA evidence. After an evidentiary hearing, the Douglas County District Court denied relief, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Newman, 310 Neb. 463, 966 N.W.2d 860 (2021)
- Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011)
- State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011)
- State v. Bauldwin, 283 Neb. 678, 811 N.W.2d 267 (2012)
- State v. Tucker, 301 Neb. 856, 920 N.W.2d 680 (2018)
- Schafersman v. Agland Coop, 262 Neb. 215, 631 N.W.2d 862 (2001)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)
- State v. Edwards, 278 Neb. 55, 767 N.W.2d 784 (2009)
- State v. Archie, 273 Neb. 612, 733 N.W.2d 513 (2007)
- State v. Tolliver, 268 Neb. 920, 689 N.W.2d 567 (2004)
- State v. Fernando-Granados, 268 Neb. 290, 682 N.W.2d 266 (2004)

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