

SUPREME COURT OF NEBRASKA

State v. Case

304 Neb. 829 (2020) · No. No. S-18-1197 · Decided January 17, 2020

SUMMARY

The Nebraska Supreme Court affirmed Trevor S. Case’s conviction and sentence for assault by a confined person. The court held that the evidence did not support a self-defense instruction, rejected his challenge to admission of a recorded jail telephone call based on late disclosure, and determined that sufficient evidence supported the conviction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	January 17, 2020
DOCKET	No. S-18-1197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a jury conviction and sentence for assault by a confined person.
STANDARD OF REVIEW	Jury-instruction correctness is reviewed de novo as a question of law. Discovery sanctions are reviewed for abuse of discretion. Sufficiency of the evidence is reviewed by asking whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt; the appellate court does not resolve credibility conflicts or reweigh evidence.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Trevor S. Case v. State of Nebraska

TOPICS

- self defense
- jury instructions
- discovery criminal
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred by refusing to give Case's proposed self-defense jury instruction.
2. Whether the district court erred by admitting the recording of Case's jail telephone call after its late disclosure under the criminal discovery statute and discovery order.
3. Whether sufficient evidence supported Case's conviction for assault by a confined person.

HOLDINGS

1. The district court did not err in refusing the proposed self-defense instruction because the evidence did not support a legally cognizable theory of self-defense. Case voluntarily left his cell and approached Burley without evidence that he was prevented from remaining safely inside his cell, thereby unjustifiably placing himself in harm's way.
2. Case waived any right to relief under Neb. Rev. Stat. § 29-1912 by failing to request a continuance after the State disclosed the recording. The district court therefore did not err in admitting the recording.
3. The evidence was sufficient to support Case's conviction for assault by a confined person.

KEY QUOTATIONS

“It is not enough to merely show “any evidence” of self-defense to support an instruction thereon. Instead, the defendant must show “any evidence in support of a legally cognizable theory of self-defense.”” (at 843)

“However, Case failed to request a continuance after the court overruled his objection, and therefore, he waived any right he may have had pursuant to § 29-1912.” (at 846)

FACTUAL BACKGROUND

While confined in the Lancaster County jail, Case became involved in a physical altercation with former cellmate Kenneth Burley. Surveillance video and witness testimony showed Case leaving his cell, approaching Burley, striking him, and continuing the confrontation after correctional staff intervened; Burley sustained injuries. A recorded jail telephone call, disclosed to Case the day before trial, included Case's statement that he had gone for Burley.

PROCEDURAL HISTORY

A Lancaster County District Court jury found Case guilty of assault by a confined person. The district court sentenced him to 365 days in jail followed by 12 months of postrelease supervision. Case appealed, challenging the refusal of his requested self-defense instruction, admission of a jail telephone-call recording disclosed shortly before trial, and the sufficiency of the evidence.

DISPOSITION

affirmed

CASES CITED

- State v. Bigelow, 303 Neb. 729, 931 N.W.2d 842 (2019)
- State v. Hatfield, ante p. 66, 933 N.W.2d 78 (2019)
- State v. Stubbendieck, 302 Neb. 702, 924 N.W.2d 711 (2019)
- State v. Graham, 234 Neb. 275, 450 N.W.2d 673 (1990)
- State v. Kinser, 252 Neb. 600, 567 N.W.2d 287 (1997)
- State v. Smith, 284 Neb. 636, 822 N.W.2d 401 (2012)
- State v. Urbano, 256 Neb. 194, 589 N.W.2d 144 (1999)
- State v. Marshall, 253 Neb. 676, 573 N.W.2d 406 (1998)
- State v. Montoya, ante p. 96, 933 N.W.2d 558 (2019)
- State v. Graham, 201 Neb. 659, 271 N.W.2d 456 (1978)