

SUPREME COURT OF NEBRASKA

State v. Ash

286 Neb. 681 (2013) · No. No. S-12-753 · Decided October 18, 2013

SUMMARY

The Nebraska Supreme Court reversed Vencil Leo Ash III’s first-degree murder conviction and sentence and remanded for a new trial. The court held that the district court abused its discretion by denying a continuance after Ash’s codefendant reached a plea agreement to testify shortly before trial, depriving the defense of an adequate opportunity to investigate her testimony. The court also addressed the admissibility of a pawn receipt under Nebraska’s rules concerning evidence of other crimes or acts, concluding that the evidence was not inextricably intertwined with the charged murder.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per curiam; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	October 18, 2013
DOCKET	No. S-12-753
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ash appealed his first-degree murder conviction and life sentence, challenging the denial of his motion for a continuance and the admission of a pawn receipt as evidence of a prior bad act.
STANDARD OF REVIEW	A denial of a criminal continuance and evidentiary rulings concerning relevancy and admissibility under Nebraska Evidence Rules 403 and 404(2) are reviewed for abuse of discretion. A judicial abuse of discretion occurs when the ruling is clearly untenable, unfairly deprives a litigant of a substantial right, and denies a just result.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Vencil Leo Ash III v. State of Nebraska

TOPICS

- criminal procedure
- appellate procedure
- evidence
- character evidence

PRACTICE AREAS

criminal procedure

criminal evidence

appellate procedure

constitutional criminal law

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Ash's motion for a continuance after a codefendant entered into a plea agreement to testify against him on the eve of trial.
2. Whether the denial of an adequate opportunity to investigate the codefendant's newly disclosed testimony was prejudicial.
3. Whether double jeopardy barred a retrial after reversal of the conviction for trial error.
4. Whether the pawn receipt was improperly admitted under Neb. Evid. R. 404(2) as evidence of an uncharged theft without the hearing and proof required by Neb. Rev. Stat. § 27-404(3).

HOLDINGS

1. When the State reaches a plea agreement with a codefendant to testify on the brink of trial, and the testimony is central to the prosecution, the trial court must, upon request, provide defense counsel with an adequate opportunity to investigate facts relevant to defending against that testimony.
2. The failure to provide a requested continuance under the circumstances presented was prejudicial and constituted reversible error.
3. Double jeopardy does not bar a retrial when the totality of the evidence admitted at trial, whether admitted erroneously or not, was sufficient to sustain the guilty verdict.
4. The pawn receipt showing that Ash pawned Guitron's jacket two days before the murder was not inextricably intertwined with the charged murder and could not be admitted under that exception without applying the protections of Neb. Evid. R. 404(2) and § 27-404(3).

KEY QUOTATIONS

"We therefore hold that when the State reaches a plea agreement with a codefendant to testify on the brink of trial and that testimony is central to the State's prosecution of a criminal defendant, a trial court must, upon request, provide defense counsel with an adequate opportunity to investigate facts relevant to defending against the testimony." (692)

"The failure to provide a continuance under such circumstances is prejudicial." (692)

"But the Double Jeopardy Clause does not forbid a retrial so long as the sum of all the evidence admitted by a trial court, whether erroneously or not, would have been sufficient to sustain a guilty verdict." (693)

"We conclude that the court abused its discretion in admitting evidence of the theft under the inextricably intertwined exception." (696)

FACTUAL BACKGROUND

Vencil Leo Ash III was charged with murdering Ryan Guitron, whose remains were found nearly seven years after his disappearance. Ash and his codefendant, Kelly Meehan-Ash, gave conflicting accounts of the shooting,

and Meehan-Ash initially faced an aiding-and-abetting murder charge. Three days before trial, Meehan-Ash reached a plea agreement reducing her charge in exchange for testifying against Ash, and her subsequent deposition disclosed information concerning methamphetamine use, hallucinations, and potential impeachment evidence. The State also introduced a receipt showing that Ash had pawned Guitron's jacket two days before the murder.

PROCEDURAL HISTORY

Ash was charged with first-degree murder, tried before a jury, convicted, and sentenced to life imprisonment. Shortly before trial, a codefendant entered into a plea agreement with the State and agreed to testify against Ash. The district court denied Ash's repeated requests for a continuance and admitted a pawn receipt showing that Ash had pawned the victim's jacket. The Nebraska Supreme Court reversed the conviction and sentence and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The conviction and sentence are reversed, and the cause is remanded for a new trial. The court must provide an adequate opportunity to investigate a codefendant's testimony if the State reaches a plea agreement with that codefendant to testify on the brink of trial. On retrial, any admission of the pawn receipt as other-acts evidence must comply with Neb. Evid. R. 404(2) and § 27-404(3).

CASES CITED

- State v. Davlin, 272 Neb. 139, 719 N.W.2d 243 (2006)
- State v. Freemont, 284 Neb. 179, 817 N.W.2d 277 (2012)
- Brady v. Maryland, 373 U.S. 83 (1963)
- Kyles v. Whitley, 514 U.S. 419 (1995)
- State v. Kula, 252 Neb. 471, 562 N.W.2d 717 (1997)
- State v. Van, 268 Neb. 814, 688 N.W.2d 600 (2004)
- State v. Castor, 257 Neb. 572, 599 N.W.2d 201 (1999)
- State v. Sorensen, 283 Neb. 932, 814 N.W.2d 371 (2012)
- State v. Beeder, 270 Neb. 799, 707 N.W.2d 790 (2006)
- State v. McCulloch, 274 Neb. 636, 742 N.W.2d 727 (2007)
- State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011)
- State v. Baker, 280 Neb. 752, 789 N.W.2d 702 (2010)
- State v. Wisinski, 268 Neb. 778, 688 N.W.2d 586 (2004)
- State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006)
- State v. McPherson, 266 Neb. 734, 668 N.W.2d 504 (2003)

- State v. Aguilar, 264 Neb. 899, 652 N.W.2d 894 (2002)
- State v. Pruett, 263 Neb. 99, 638 N.W.2d 809 (2002)

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