

SUPREME COURT OF NEBRASKA

State v. Cosey

303 Neb. 257 (2019) · No. No. S-18-747 · Decided May 31, 2019

SUMMARY

The Nebraska Supreme Court affirmed the district court’s denial of Eugene T. Cosey’s motion to suppress a confidential informant’s identification of him. The court held that although the single-photograph identification procedure was suggestive, the identification was sufficiently reliable under the totality of the circumstances and therefore admissible.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 31, 2019
DOCKET	No. S-18-747
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cosey appealed after a jury convicted him of delivery of a controlled substance and the district court denied his motion to suppress a confidential informant's photographic identification.
STANDARD OF REVIEW	The conclusion whether an identification is consistent with due process is reviewed de novo; findings of historical fact are reviewed for clear error.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Eugene T. Cosey, also known as John Lnu, also known as “G” v. State of Nebraska

TOPICS

suppression of evidence criminal procedure due process fourteenth amendment appellate procedure

PRACTICE AREAS

criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by admitting an out-of-court identification obtained through an unnecessarily suggestive single-photograph procedure.
2. Whether, under the totality of the circumstances, the identification was sufficiently reliable that it did not present a very substantial likelihood of irreparable misidentification.

HOLDINGS

1. An out-of-court identification obtained through an unnecessarily suggestive police procedure is not automatically excluded. The trial court must determine whether the procedure was unnecessarily suggestive and, if so, whether it rendered the identification unreliable under the totality of the circumstances.
2. The informant's identification of Cosey was sufficiently reliable to be admitted despite the suggestive photographic procedure.

KEY QUOTATIONS

“An identification infected by improper police influence . . . is not automatically excluded. Instead, the trial judge must screen the evidence for reliability pretrial.” (303 Neb. at 261-262)

“Reliability is the linchpin in determining the admissibility of identification testimony.” (303 Neb. at 262)

“Under the totality of the circumstances, the identification of Cosey was reliable, even though the confrontation procedure may have been suggestive.” (303 Neb. at 267)

FACTUAL BACKGROUND

A confidential informant met Eugene Cosey, known to the informant as “G,” during two narcotics-related encounters totaling approximately 18 minutes. The informant observed Cosey at close range during daylight and later provided law enforcement with a physical description. An officer obtained a single photograph of Cosey and sent it to the informant with the question, “Is this ‘G’?”; the informant identified Cosey as the person who sold him methamphetamine. The district court deemed the procedure unduly suggestive but admitted the identification after finding it reliable, and Cosey was convicted.

PROCEDURAL HISTORY

Cosey was charged with delivery of a controlled substance arising from a narcotics transaction. The district court found that law enforcement's use of a single photograph and a leading question was unduly suggestive but held that the informant's identification was sufficiently reliable to be admitted. After a jury convicted Cosey, the State dismissed the habitual criminal enhancement, and Cosey was sentenced to 3 to 5 years' imprisonment. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Taylor, 287 Neb. 386, 842 N.W.2d 771 (2014)
- Neil v. Biggers, 409 U.S. 188 (1972)
- Manson v. Brathwaite, 432 U.S. 98 (1977)
- Perry v. New Hampshire, 565 U.S. 228 (2012)
- State v. Faust, 269 Neb. 749, 696 N.W.2d 420 (2005)
- Simmons v. United States, 390 U.S. 377 (1968)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/nebraska-supreme-court-of-nebraska/2019/state-v-cosey-gn48u7rh>