

NEBRASKA SUPREME COURT

State v. Betancourt-Garcia

299 Neb. 775 (2018) · No. S-17-690 · Decided April 26, 2018

SUMMARY

The Nebraska Supreme Court affirmed the denial of Rosario Betancourt-Garcia’s motion for forensic DNA testing under Nebraska’s DNA Testing Act. The court held that the requested biological material was no longer in the State’s actual or constructive possession because it had been destroyed before the motion was filed, placing it outside the Act’s scope. The court also held that Betancourt-Garcia’s constitutional challenge to the destruction of evidence was not properly presented and was outside the purview of the DNA Testing Act.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Moore, Chief Judge; Arterburn, Judge; Doyle, District Judge
JURISDICTION	Nebraska
DECIDED	April 26, 2018
DOCKET	S-17-690
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a post-conviction motion for forensic DNA testing under Nebraska's DNA Testing Act.
STANDARD OF REVIEW	A motion for DNA testing is reviewed for abuse of discretion; factual findings related to the motion are upheld unless clearly erroneous.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Rosario Betancourt-Garcia v. State of Nebraska

TOPICS

- post-conviction relief
- actual innocence
- due process
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- constitutional law
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Betancourt's motion for DNA testing because the requested biological material had been destroyed and was not in the actual or constructive possession or control of the State or others.
2. Whether Betancourt could raise on appeal a due process challenge based on the State's destruction of the evidence when that challenge was not presented in his motion under the DNA Testing Act.

HOLDINGS

1. Biological material does not fall within the purview of the DNA Testing Act when it is not in the actual or constructive possession or control of the State or others at the time the motion is filed. Because the requested evidence had been destroyed before the motion, the district court properly denied DNA testing.
2. A constitutional challenge to the destruction of evidence is outside the purview of the DNA Testing Act, and Betancourt could not obtain appellate review of that claim because his motion did not raise it and instead alleged that the evidence remained in State custody.

KEY QUOTATIONS

“It is a limited remedy providing inmates an opportunity to obtain DNA testing in order to establish innocence after a conviction.” (at 779-780)

“And in any event, a constitutional challenge to the destruction of evidence is outside the purview of the DNA Testing Act.” (at 783)

FACTUAL BACKGROUND

Betancourt was convicted in 2015 of kidnapping, use of a firearm to commit kidnapping, and conspiracy to commit kidnapping based on evidence that he and another man bound and gagged Pedro Jesus Rayon-Piza in a shed. Physical evidence from the crime, including duct tape, shoes, shoelaces, cord, and clothing, had been collected but was destroyed by law enforcement while cleaning out an evidence room before Betancourt's trial and convictions. Betancourt later sought DNA testing, alleging that testing could produce exculpatory evidence, but the evidence no longer existed when he filed his motion.

PROCEDURAL HISTORY

Betancourt was convicted of kidnapping, use of a firearm to commit kidnapping, and conspiracy to commit kidnapping, and the Nebraska Supreme Court affirmed his convictions on direct appeal while remanding for resentencing on the conspiracy conviction. He then moved for forensic DNA testing of physical evidence, including duct tape, shoes, shoelaces, cord, and clothing. After an evidentiary hearing, the district court denied the motion because the requested evidence had been destroyed before the motion was filed. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Betancourt-Garcia, 295 Neb. 170, 887 N.W.2d 296 (2016)
- State v. Robbins, 297 Neb. 503, 900 N.W.2d 745 (2017)
- State v. Pratt, 287 Neb. 455, 842 N.W.2d 800 (2014)
- California v. Trombetta, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)

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