

NEBRASKA SUPREME COURT

State v. Montoya

305 Neb. 581 (2020) · No. No. S-19-660 · Decided April 17, 2020

SUMMARY

The Nebraska Supreme Court affirmed Lorenzo Montoya’s conviction and sentence for driving under the influence. The court held that the traffic stop was supported by reasonable suspicion, the arrest was supported by probable cause, and amended certificates concerning breath-testing simulator solutions provided an adequate foundation for admitting the DataMaster results without violating the Confrontation Clause. The court also rejected Montoya’s sufficiency-of-the-evidence and excessive-sentence claims.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	April 17, 2020
DOCKET	No. S-19-660
DISPOSITION	affirmed
PROCEDURAL POSTURE	Montoya appealed his Lancaster County county court conviction and sentence for driving under the influence to the Lancaster County District Court, which affirmed. The Nebraska Supreme Court moved the subsequent appeal from the Nebraska Court of Appeals to its docket and affirmed the district court.
STANDARD OF REVIEW	For Fourth Amendment suppression rulings, historical facts are reviewed for clear error and the ultimate constitutional question independently. Foundation rulings are reviewed for abuse of discretion; hearsay factual findings for clear error and ultimate admissibility determinations de novo; Confrontation Clause determinations de novo with underlying factual findings reviewed for clear error; sufficiency of the evidence under the rational-trier-of-fact standard; and sentences within statutory limits for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Lorenzo Montoya v. State of Nebraska

TOPICS

suppression of evidence

search and seizure

probable cause

evidence

sentencing

PRACTICE AREAS

criminal procedure

DUI/DWI

constitutional law

evidence

sentencing

QUESTIONS PRESENTED

1. Whether the trooper had reasonable suspicion to stop Montoya's vehicle for speeding despite the absence of a documented visual speed estimate and the possibility that the radar could have malfunctioned.
2. Whether Montoya preserved his challenge to probable cause for his arrest by failing to renew his suppression objection at trial.
3. Whether amended certificates correcting the name of the person who tested breath-testing simulator solutions supplied sufficient foundation for admission of the DataMaster results under title 177 of the Nebraska Administrative Code.
4. Whether the amended simulator-solution certificates were testimonial and their admission violated the Confrontation Clause.
5. Whether the evidence, including the DataMaster result, was sufficient to support Montoya's driving-under-the-influence conviction.
6. Whether Montoya's sentence was excessive because the sentencing court considered pending charges and allegedly failed to give adequate weight to mitigating circumstances.

HOLDINGS

1. A radar reading indicating that a vehicle was traveling 50 miles per hour in a 35-mile-per-hour zone, together with the officer's testimony that he checked the radar, waited for an appropriate reading, and received a good Doppler tone, provided reasonable suspicion for the stop. A preradar visual estimate documented in the police report and proof of radar accuracy are not required to establish reasonable suspicion for a speeding stop.
2. Montoya waived his appellate challenge to the probable cause for his arrest by failing to renew his suppression objection at trial, even though he had previously raised the issue in a pretrial motion.
3. Amended certificates of analysis correcting clerical errors in the identity of the person who tested simulator solutions provide satisfactory evidence that inspections of an approved breath-testing device complied with title 177 of the Nebraska Administrative Code.
4. Original and amended simulator-solution certificates are nontestimonial business records when prepared routinely without regard to a particular defendant; their admission therefore does not violate the Confrontation Clause.

5. The evidence was sufficient to support Montoya's driving-under-the-influence conviction because the admissible DataMaster result showed a breath alcohol concentration of 0.134 grams per 210 liters of breath.
6. The sentence was not excessive because it fell within statutory limits and the sentencing court did not abuse its discretion by considering relevant sentencing factors, including pending charges for allegedly illegal acts committed after the offense.

KEY QUOTATIONS

“We hold that amended certificates of analysis to correct clerical errors provide satisfactory evidence that the inspections of an approved breath testing device complied with the requirements of title 177 of the Nebraska Administrative Code.” (604)

“In either case, the simulator solution certifications are prepared in a routine manner without regard to any particular defendant.” (605)

“A failure to object to evidence at trial, even though the evidence was the subject of a previous motion to suppress, waives the objection, and a party will not be heard to complain of the alleged error on appeal.” (600)

FACTUAL BACKGROUND

A Nebraska State Patrol trooper observed Montoya driving at what appeared to be more than the 35-mile-per-hour speed limit and obtained a radar reading of 50 miles per hour after checking the radar at the beginning of his shift. During the stop, the trooper observed signs of intoxication, administered field sobriety tests, and arrested Montoya; a subsequent DataMaster breath test showed 0.134 grams of alcohol per 210 liters of breath. The DataMaster had been calibrated with simulator solutions whose original certificates incorrectly identified the person who tested them, but amended certificates correcting that clerical error were obtained before trial. Montoya was convicted of third-offense driving under the influence and received a sentence within the statutory limits.

PROCEDURAL HISTORY

Montoya was convicted in county court of third-offense driving under the influence and sentenced to 180 days in jail, a \$1,000 fine, and a 15-year license revocation with eligibility to apply for an interlock device permit. The district court affirmed the conviction and sentence on intermediate appeal. The Nebraska Supreme Court affirmed after reviewing challenges to suppression rulings, the foundation and Confrontation Clause treatment of DataMaster breath-test results, sufficiency of the evidence, and the sentence.

DISPOSITION

affirmed

CASES CITED

- State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011)

- State v. Hartzell, 304 Neb. 82, 933 N.W.2d 441 (2019)
- State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018)
- State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008)
- State v. Smith, 302 Neb. 154, 922 N.W.2d 444 (2019)
- State v. McCurdy, 301 Neb. 343, 918 N.W.2d 292 (2018)
- Terry v. Ohio, 392 U.S. 1 (1968)
- State v. Schrinier, 303 Neb. 476, 929 N.W.2d 514 (2019)
- State v. Rogers, 297 Neb. 265, 899 N.W.2d 626 (2017)
- State v. Piper, 289 Neb. 364, 855 N.W.2d 1 (2014)
- State v. Barbeau, 301 Neb. 293, 917 N.W.2d 913 (2018)
- State v. Snyder, 184 Neb. 465, 168 N.W.2d 530 (1969)
- State v. Kudlacek, 229 Neb. 297, 426 N.W.2d 289 (1988)
- Taylor v. Wimes, 10 Neb. Ct. App. 432, 632 N.W.2d 366 (2001)
- State v. Goynes, 303 Neb. 129, 927 N.W.2d 346 (2019)
- State v. Jasa, 297 Neb. 822, 901 N.W.2d 315 (2017)
- State v. Bullock, 223 Neb. 182, 388 N.W.2d 505 (1986)
- In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019)
- State v. McIntyre, 290 Neb. 1021, 863 N.W.2d 471 (2015)
- Shelter Mut. Ins. Co. v. Freudenburg, 304 Neb. 1015, 938 N.W.2d 92 (2020)
- State v. Krannawitter, ante p. 66, 939 N.W.2d 335 (2020)
- Davis v. Washington, 547 U.S. 813 (2006)
- State v. Fischer, 272 Neb. 963, 726 N.W.2d 176 (2007)
- State v. Iddings, 304 Neb. 759, 936 N.W.2d 747 (2020)
- State v. Becker, 304 Neb. 693, 936 N.W.2d 505 (2019)
- State v. Jenkins, 303 Neb. 676, 931 N.W.2d 851 (2019)
- State v. Anglemeyer, 269 Neb. 237, 691 N.W.2d 153 (2005)
- State v. Williams, 282 Neb. 182, 802 N.W.2d 421 (2011)
- State v. Rice, 269 Neb. 717, 695 N.W.2d 418 (2005)
- State v. Gibson, 302 Neb. 833, 925 N.W.2d 678 (2019)