

SUPREME COURT OF NEBRASKA

State v. Huff

776 N.W.2d 498, 279 Neb. 68 (2009) · No. No. S-09-286 · Decided December 24, 2009

SUMMARY

The Nebraska Supreme Court held that continued prosecution of Herchel Harold Huff on a motor vehicle homicide charge after his guilty plea to manslaughter in the same prosecution did not yet violate double jeopardy. Relying on *Ohio v. Johnson* and *State v. Humbert*, the court affirmed the denial of Huff’s plea in bar, while leaving unresolved whether the offenses are the same for purposes of a future multiple-punishment claim.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stephan, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	December 24, 2009
DOCKET	No. S-09-286
DISPOSITION	remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of Huff’s plea in bar seeking dismissal of a motor vehicle homicide charge on double-jeopardy grounds after he pleaded guilty to manslaughter.
STANDARD OF REVIEW	Issues regarding the grant or denial of a plea in bar are questions of law reviewed independently.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Herchel Harold Huff v. State of Nebraska

TOPICS

- double jeopardy
- criminal procedure
- interlocutory appeal
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Double Jeopardy Clause barred continued prosecution for motor vehicle homicide after Huff pleaded guilty to manslaughter when both charges arose from the same incident and were included in the same information.
2. Whether the Nebraska Supreme Court should decide whether manslaughter and motor vehicle homicide are the same offense under the Blockburger test at the interlocutory plea-in-bar stage.

HOLDINGS

1. The Double Jeopardy Clause does not bar the State from continuing to prosecute a remaining charge in the same prosecution merely because the defendant has already pleaded guilty to another charge in the multicount information. A double-jeopardy claim based on multiple punishments may be asserted if the defendant is later convicted and sentenced on the motor vehicle homicide charge.
2. The court expressly declined to decide whether involuntary manslaughter and motor vehicle homicide are the same offense for purposes of a double-jeopardy analysis because no multiple-punishment claim yet existed.

KEY QUOTATIONS

“This case does not involve successive prosecutions, but, rather, a single prosecution involving multiple charges, only one of which has been resolved by a plea.” (503)

“The State has not had an opportunity to prosecute Huff on the remaining charges, and it is not prevented by the Double Jeopardy Clause from doing so.” (503)

“We express no opinion as to whether the district court was correct in concluding that involuntary manslaughter and motor vehicle homicide are not the “same offense” for purposes of a double jeopardy analysis.” (503)

FACTUAL BACKGROUND

On October 3, 2007, Huff was involved in a motor vehicle accident in rural Furnas County, and Kasey Jo Warner died at the scene. A deputy detected a strong odor of alcohol and arrested Huff; Huff admitted driving the vehicle, and another person confirmed that fact. The amended information charged Huff with motor vehicle homicide predicated on third-offense driving under the influence, manslaughter predicated on operating a motor vehicle carelessly or without due caution, refusal to submit to a chemical test, and tampering with a witness.

PROCEDURAL HISTORY

After a fatal motor vehicle accident, Huff was charged with manslaughter, motor vehicle homicide, refusal to submit to a chemical test, and tampering with a witness. He pleaded guilty to manslaughter and not guilty to the remaining charges, then filed a plea in bar asserting that continued prosecution for motor vehicle homicide would violate double jeopardy. The Furnas County District Court denied the plea in bar, concluding that manslaughter and motor vehicle homicide were not the same offense. The Nebraska Supreme Court moved the timely interlocutory appeal to its docket and affirmed on the alternative ground that the case involved a single prosecution with multiple charges, not successive prosecutions.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Affirm the order overruling the plea in bar and remand for further proceedings.

CASES CITED

- State v. Jackson, 274 Neb. 724, 742 N.W.2d 751 (2007)
- State v. Claussen, 276 Neb. 630, 756 N.W.2d 163 (2008)
- State v. Williams, 278 Neb. 841, 774 N.W.2d 384 (2009)
- State v. Milenkovich, 236 Neb. 42, 458 N.W.2d 747 (1990)
- State v. Wright, 261 Neb. 277, 622 N.W.2d 676 (2001)
- State v. Brouillette, 265 Neb. 214, 655 N.W.2d 876 (2003)
- State v. Burnett, 254 Neb. 771, 579 N.W.2d 513 (1998)
- State v. Roth, 222 Neb. 119, 382 N.W.2d 348 (1986)
- State v. Sinica, 277 Neb. 629, 764 N.W.2d 111 (2009)
- Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)
- State v. Dragoo, 277 Neb. 858, 765 N.W.2d 666 (2009)
- State v. Humbert, 272 Neb. 428, 722 N.W.2d 71 (2006)
- Ohio v. Johnson, 467 U.S. 493, 104 S. Ct. 2536, 81 L. Ed. 2d 425 (1984)
- State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008)

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