

SUPREME COURT OF NEBRASKA

State v. Price

306 Neb. 38 (2020) · No. No. S-19-192 · Decided June 5, 2020

SUMMARY

The Nebraska Supreme Court affirmed James S. Price’s convictions and concurrent sentences for aiding and abetting robbery and aiding and abetting first degree assault. The court addressed claims concerning a mistrial and plea in bar, prosecutorial misconduct, denial of a new trial, sufficiency of the evidence, excessive sentences, and ineffective assistance of counsel. It declined to consider the ineffective-assistance claim because the assignment of error did not specifically allege deficient performance.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	June 5, 2020
DOCKET	No. S-19-192
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions and sentences for aiding and abetting robbery and aiding and abetting first degree assault following a second jury trial.
STANDARD OF REVIEW	Unpreserved prosecutorial-misconduct claims are reviewed for plain error. Denial of a motion for new trial is reviewed for abuse of discretion. Sufficiency of the evidence is reviewed by determining whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt. A sentence within statutory limits is reviewed for abuse of discretion. The law-of-the-case doctrine directs appellate discretion and precludes reconsideration of substantially similar issues absent materially and substantially different facts or considerations of substantial justice warranting reexamination.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Supreme Court should reconsider claims concerning the first trial's mistrial and the denial of Price's plea in bar, including whether the jury should have been questioned about deadlock on each count.
2. Whether the prosecutor committed misconduct during closing argument and whether the district court plainly erred by failing to declare a mistrial sua sponte.
3. Whether the district court abused its discretion by denying Price's motion for a new trial.
4. Whether sufficient evidence supported Price's convictions for aiding and abetting robbery and aiding and abetting first degree assault.
5. Whether Price's concurrent sentences of 25 to 40 years' imprisonment were excessive.

HOLDINGS

1. The Nebraska Court of Appeals' prior rulings concerning the mistrial and denial of the plea in bar established the law of the case, and Price presented no materially and substantially different facts warranting reconsideration.
2. Because Price neither objected to the prosecutor's closing remarks nor moved for a mistrial, his prosecutorial-misconduct claim was waived except for plain-error review; the court found no plain error.
3. The district court did not abuse its discretion in denying Price's motion for a new trial.
4. The evidence was sufficient to support Price's convictions for aiding and abetting robbery and aiding and abetting first degree assault.
5. The concurrent sentences of 25 to 40 years' imprisonment were within the statutory limits, and the district court did not abuse its discretion in imposing them.
6. The court did not consider Price's ineffective-assistance claim because his direct-appeal assignment of error failed to specifically allege deficient performance.

KEY QUOTATIONS

“In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the evidence admitted at trial, viewed and construed most favorably to the State, is sufficient to support the conviction.” (306 Neb. at 39)

“A party who fails to make a timely motion for mistrial based on prosecutorial misconduct waives the right to assert on appeal that the court erred in not declaring a mistrial due to such prosecutorial misconduct.” (306 Neb. at 54)

“When a criminal defendant challenges the sufficiency of the evidence upon which a conviction is based, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (306 Neb. at 59)

FACTUAL BACKGROUND

In the early morning of October 3, 2014, two men approached Patrick Pantoja and Emmanuel Nartey near the Nebraska State Capitol, demanded money, and then punched and kicked Pantoja, causing severe traumatic brain injuries. The assailants took property from Pantoja, and Nartey identified Price as one of the two men involved. Surveillance footage, police testimony, clothing recovered from Price's apartment, and other circumstantial evidence also linked Price to the incident. At the second trial, Price did not testify or present other evidence, and the jury convicted him of aiding and abetting robbery and aiding and abetting first degree assault.

PROCEDURAL HISTORY

Price's first trial ended in a deadlocked jury and a mistrial. The district court overruled Price's plea in bar, and the Nebraska Court of Appeals affirmed; the Nebraska Supreme Court denied further review. Price was then convicted at a second trial and sentenced to concurrent terms of 25 to 40 years' imprisonment. The district court denied his motion for new trial, and Price appealed to the Nebraska Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Price, No. A-17-565, 2018 WL 718501 (Neb. App. Feb. 6, 2018)
- State v. Combs, 297 Neb. 422, 900 N.W.2d 473 (2017)
- State v. Mrza, 302 Neb. 931, 926 N.W.2d 79 (2019)
- State v. Guzman, 306 Neb. 376, 940 N.W.2d 552 (2020)
- State v. Lavalleur, 298 Neb. 237, 903 N.W.2d 464 (2017)
- State v. Merchant, 288 Neb. 439, 848 N.W.2d 630 (2014)
- State v. Krannawitter, 304 Neb. 66, 939 N.W.2d 335 (2020)
- State v. Case, 304 Neb. 829, 937 N.W.2d 216 (2020)
- State v. Becker, 304 Neb. 693, 936 N.W.2d 505 (2019)
- State v. Gonzales, 294 Neb. 627, 884 N.W.2d 102 (2016)
- State v. Cotton, 299 Neb. 650, 910 N.W.2d 102 (2018)
- State v. Avina-Murilla, 301 Neb. 185, 917 N.W.2d 865 (2018)

- State v. Stubbendieck, 302 Neb. 702, 924 N.W.2d 711 (2019)
- State v. Thomas, 210 Neb. 298, 314 N.W.2d 15 (1981)

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