

NEBRASKA SUPREME COURT

State v. Myers

301 Neb. 756 (2018) · No. No. S-18-239 · Decided November 30, 2018

SUMMARY

The Nebraska Supreme Court reviewed James E. Myers’ motion for DNA testing under the Nebraska DNA Testing Act and his request for appointed counsel. The court held that the district court improperly applied standards governing post-testing relief when deciding whether to order testing, reversed the denials, and remanded for reconsideration under the correct statutory framework. The court also held that Myers’ claim concerning alleged withholding of biological evidence was outside the scope of the DNA Testing Act proceeding.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	November 30, 2018
DOCKET	No. S-18-239
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Myers appealed the Douglas County District Court's denial of his motion for DNA testing under the DNA Testing Act and his motion for appointment of counsel.
STANDARD OF REVIEW	A motion for DNA testing and decisions concerning appointment of counsel under the DNA Testing Act are reviewed for abuse of discretion. Factual findings related to a DNA-testing motion are upheld unless clearly erroneous.
PRECEDENTIAL VALUE	Published, precedential Nebraska Supreme Court opinion
PARTIES	James E. Myers v. State of Nebraska

TOPICS

- post-conviction relief
- criminal procedure
- appellate procedure
- standard of review
- evidence

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the district court applied the correct statutory standard in denying Myers's motion for DNA testing under Neb. Rev. Stat. § 29-4120(5).
2. Whether the denial of Myers's motion for appointment of counsel should be reconsidered under the proper DNA Testing Act standard.
3. Whether Myers's claim that the prosecution improperly withheld biological evidence could be litigated in a motion for DNA testing under the DNA Testing Act.

HOLDINGS

1. The district court erred by applying the more demanding standards governing relief available after DNA testing, rather than determining only whether the requirements of Neb. Rev. Stat. § 29-4120(5) were satisfied. Because the order did not clearly show that the denial rested solely on the proper threshold standard, the order had to be reversed and remanded.
2. The denial of appointment of counsel was reversed and remanded for the district court to determine whether Myers made the required showing that DNA testing may be relevant to his claim of wrongful conviction.
3. A claim that the prosecution improperly withheld evidence is not properly presented in a motion for DNA testing under the DNA Testing Act, and the district court need not consider that argument on remand.

KEY QUOTATIONS

“If the above criteria are met and if the court further determines that the requirements of § 29-4120(5) have been met, the court must order testing.” (763-764)

“But a more rigorous standard applies after testing has been ordered.” (764)

“Because the court’s order fails to make clear that its denial of DNA testing was based solely on § 29-4120(5), we must remand the cause to the district court for a determination under that section, based upon the existing record.” (766)

FACTUAL BACKGROUND

James E. Myers was convicted in connection with the 1995 shooting death of Lynette Mainelli. The trial evidence included testimony concerning Myers's movements before and after the killing, a .22-caliber handgun linked to bullets found at the scene, statements attributed to Myers, and evidence that he wore gloves. In 2016, Myers sought DNA testing of 26 items, including bedding, casings, clothing, cigarette butts, a rape kit, blood samples, and hair samples, asserting that testing could produce evidence excluding him as a donor and support his claim of wrongful conviction.

PROCEDURAL HISTORY

Myers was convicted by a jury of first degree murder, use of a deadly weapon in the commission of a felony, and possession of a deadly weapon by a felon, and the Nebraska Supreme Court affirmed the convictions on direct appeal. Nearly 20 years later, he sought DNA testing of biological evidence and appointment of counsel. The district court denied both motions, applying a standard concerning post-testing relief and exoneration rather than the threshold standard governing whether testing should be ordered. The Nebraska Supreme Court reversed and remanded for reconsideration under the correct statutory framework.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reconsider the motion for DNA testing under Neb. Rev. Stat. § 29-4120(5), based on the existing record, determining whether the statutory requirements are met, including whether testing may produce noncumulative evidence favorable to Myers and material to the issue of his guilt. The court must also reconsider whether Myers made the requisite showing for appointment of counsel under Neb. Rev. Stat. § 29-4122. The court need not further consider the claim that the prosecution improperly withheld evidence.

CASES CITED

- State v. Myers, 258 Neb. 300, 603 N.W.2d 378 (1999)
- State v. Betancourt-Garcia, 299 Neb. 775, 910 N.W.2d 164 (2018)
- State v. Buckman, 267 Neb. 505, 675 N.W.2d 372 (2004)
- State v. Bronson, 267 Neb. 103, 672 N.W.2d 244 (2003)
- State v. Phelps, 273 Neb. 36, 727 N.W.2d 224 (2007)
- State v. Marrs, 295 Neb. 399, 888 N.W.2d 721 (2016)
- State v. Young, 287 Neb. 749, 844 N.W.2d 304 (2014)
- State v. McDonald, 269 Neb. 604, 694 N.W.2d 204 (2005)

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