

SUPREME COURT OF NEBRASKA

State v. Lowman

308 Neb. 482 (2021) · No. No. S-20-240 · Decided February 26, 2021

SUMMARY

The Nebraska Supreme Court affirmed Theardise K. Lowman Jr.'s convictions for possession of a controlled substance and two counts of carrying a concealed weapon. The court held that the initial police encounter was consensual, the subsequent detention was supported by reasonable suspicion, and the automobile search was supported by probable cause under the automobile exception. The court also rejected Lowman's sufficiency-of-the-evidence and ineffective-assistance claims.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	February 26, 2021
DOCKET	No. S-20-240
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lowman appealed jury convictions for possession of a controlled substance and two counts of carrying a concealed weapon after the Sarpy County District Court overruled his motion to suppress and placed him on probation.
STANDARD OF REVIEW	For a Fourth Amendment suppression ruling, historical facts are reviewed for clear error, while the ultimate question whether those facts trigger or violate Fourth Amendment protections is reviewed independently as a question of law. For sufficiency of the evidence, the court asks whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt. Whether an ineffective-assistance claim can be resolved on direct appeal is reviewed as a question of law based on whether the record is sufficient.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Theardise K. Lowman, Jr. v. State of Nebraska

TOPICS

suppression of evidence

fourth amendment

search and seizure

probable cause

ineffective assistance

PRACTICE AREAS

criminal procedure

constitutional criminal procedure

evidence

ineffective assistance of counsel

appellate procedure

QUESTIONS PRESENTED

1. Whether the initial police encounter and subsequent detention violated the Fourth Amendment.
2. Whether the warrantless search of Lowman's vehicle was supported by a recognized exception to the warrant requirement, including the automobile exception.
3. Whether the suppression issue was preserved as to evidence found on Lowman's person when counsel failed to renew a specific objection when that evidence was offered at trial.
4. Whether the evidence was sufficient to support Lowman's conviction for carrying a concealed weapon based on the machete.
5. Whether trial counsel rendered ineffective assistance by filing an allegedly untimely and inadequately briefed suppression motion and by failing to call two proposed witnesses.

HOLDINGS

1. A party must make a timely and specific objection when evidence is offered at trial to preserve a suppression issue for appellate review; failure to do so waives the objection even if the evidence was previously challenged in a motion to suppress.
2. The officer's initial approach and questioning constituted a consensual, first-tier police-citizen encounter and therefore was not a seizure protected by the Fourth Amendment.
3. The officer had reasonable suspicion, based on specific and articulable facts viewed under the totality of the circumstances, to detain Lowman for an investigatory stop.
4. The warrantless search of Lowman's vehicle was valid under the automobile exception because the vehicle was readily mobile and the circumstances supplied probable cause to believe that contraband or evidence of a crime would be found inside.
5. The evidence was sufficient for a rational trier of fact to find that the machete was concealed on or about Lowman's person because it was conveniently accessible and within his immediate physical reach.
6. Lowman's adequately particularized ineffective-assistance claims did not establish deficient performance on the record, and his conclusory allegations were insufficiently specific for appellate resolution.

KEY QUOTATIONS

“A seizure in the Fourth Amendment context occurs only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.” (493)

“Whether a police officer has a reasonable suspicion based on sufficient articulable facts depends on the totality of the circumstances and must be determined on a case-by-case basis.” (494)

FACTUAL BACKGROUND

At approximately 5:04 a.m., Officer James Murray observed Lowman's vehicle backed into a carwash bay where loitering was prohibited and saw no activity for about five minutes. During a consensual initial encounter, Murray observed a wired car stereo, an object resembling a drug pipe, and a torch-style lighter; Lowman appeared fidgety, spoke rapidly, admitted prior marijuana use, and disclosed that a machete was concealed in the vehicle. After Murray detained Lowman, searches revealed methamphetamine and drug-related items on his person and a machete, brass knuckles, and a broken methamphetamine pipe in the vehicle.

PROCEDURAL HISTORY

The district court overruled Lowman's renewed motion to suppress evidence obtained during the police encounter and vehicle search. Following a jury trial, Lowman was convicted of possession of a controlled substance and two counts of carrying a concealed weapon, but acquitted of possession of drug paraphernalia. The court placed him on two years' probation, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Briggs, ante p. 84, 953 N.W.2d 41 (2021)
- State v. Stack, 307 Neb. 773, 950 N.W.2d 611 (2020)
- State v. Theisen, 306 Neb. 591, 946 N.W.2d 677 (2020)
- State v. Lang, 305 Neb. 726, 942 N.W.2d 388 (2020), cert. denied ___ U.S. ___, 141 S. Ct. 415, 208 L. Ed. 2d 119
- State v. Oldson, 293 Neb. 718, 884 N.W.2d 10 (2016)
- State v. Saitta, 306 Neb. 499, 945 N.W.2d 888 (2020)
- Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)
- State v. Hartzell, 304 Neb. 82, 933 N.W.2d 441 (2019)
- State v. Ferrin, 305 Neb. 762, 942 N.W.2d 404 (2020)
- State v. Senn, 295 Neb. 315, 888 N.W.2d 716 (2016)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Mrza, 302 Neb. 931, 926 N.W.2d 79 (2019)
- State v. Oliveira-Coutinho, 304 Neb. 147, 933 N.W.2d 825 (2019)

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