

SUPREME COURT OF NEBRASKA

State v. Davis

310 Neb. 865 (2022) · No. No. S-21-224 · Decided February 4, 2022

SUMMARY

The Nebraska Supreme Court affirmed Raymond T. Davis’s convictions for first degree murder, conspiracy to commit robbery, and use of a deadly weapon other than a firearm to commit a felony. The court held that the information adequately alleged an overt act supporting the conspiracy charge, the evidence was sufficient to support the convictions, and the State’s questioning of its own witness did not warrant reversal.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | February 4, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | No. S-21-224                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Direct appeal from criminal convictions for first degree murder, conspiracy to commit robbery, and use of a deadly weapon other than a firearm to commit a felony.                                                                                                                                                                                                                                                                                                                                                                                                     |
| STANDARD OF REVIEW    | Whether an information is fatally defective is reviewed as a question of law, independently of the lower court's decision. Sufficiency of the evidence is reviewed by asking 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; the appellate court does not resolve conflicts, assess witness credibility, or reweigh evidence. Harmless error review asks whether the actual guilty verdict was surely unattributable to the alleged error. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PARTIES               | Raymond T. Davis v. State of Nebraska                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

TOPICS

criminal procedure

conspiracy

evidence

appellate procedure

harmless error

## PRACTICE AREAS

criminal law

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evidence

## QUESTIONS PRESENTED

1. Whether the conspiracy-to-commit-robbery count in the information was fatally defective because it alleged robbery as both the object of the conspiracy and the overt act.
2. Whether sufficient evidence supported Davis's convictions for first degree murder, conspiracy to commit robbery, and use of a deadly weapon other than a firearm to commit a felony.
3. Whether the State improperly impeached its own witness with a prior statement and, if so, whether the error required reversal.

## HOLDINGS

1. An information charging conspiracy is not fatally defective merely because it alleges the substantive offense that was the object of the conspiracy as the overt act in furtherance of the conspiracy. The conspiracy count sufficiently charged the offense.
2. An information first challenged on appeal is sufficient unless it is so defective that no construction could charge the offense of conviction; an information is fatally defective only when its allegations could be true and still fail to charge a crime.
3. The evidence was sufficient to support Davis's convictions for first degree murder, conspiracy to commit robbery, and use of a deadly weapon other than a firearm to commit a felony.
4. Even assuming that the State improperly impeached its own witness with a prior statement, any error was harmless because the guilty verdicts were surely unattributable to the challenged exchange.

## KEY QUOTATIONS

*"We thus see no reason why the State may not, as it did here, satisfy the overt act requirement by alleging the substantive offense which was the object of the conspiracy as the overt act."* (875-876)

*"Harmless error review looks to the basis on which the trier of fact actually rested its verdict; the inquiry is not whether in a trial that occurred without the error a guilty verdict would surely have been rendered, but, rather, whether the actual guilty verdict rendered in the questioned trial was surely unattributable to the error."* (878-879)

## FACTUAL BACKGROUND

Brent Quigley was found dead in his home after sustaining numerous stab wounds during an apparent robbery. The State presented evidence that Davis, Christopher Reagan, and Alisia Cooke planned to rob Quigley, entered his home, restrained or attacked him, and took property. Cooke testified about Davis's participation, and her account was corroborated by social media and text messages, cell-tower evidence, DNA evidence, and other

circumstantial evidence. A prosecution witness, Julie Skalberg, was questioned about a prior statement to police concerning Davis and his companion saying that things were getting crazy in Council Bluffs.

## PROCEDURAL HISTORY

Davis was charged in the Sarpy County District Court by information with first degree murder, robbery, conspiracy to commit robbery, and use of a deadly weapon other than a firearm to commit a felony. The district court dismissed the robbery charge on the State's motion, and a jury convicted Davis of the remaining three offenses. The district court accepted the verdicts and sentenced Davis. Davis appealed, challenging the conspiracy count, the sufficiency of the evidence, and the State's impeachment of its own witness.

## DISPOSITION

affirmed

## CASES CITED

- State v. Craig, 181 Neb. 8, 146 N.W.2d 744 (1966)
- State v. Harris, 307 Neb. 237, 948 N.W.2d 736 (2020)
- State v. Williams, 306 Neb. 261, 945 N.W.2d 124 (2020)
- State v. Walker, 272 Neb. 725, 724 N.W.2d 552 (2006)
- State v. Coleman, 209 Neb. 823, 311 N.W.2d 911 (1981)
- State v. Theisen, 306 Neb. 591, 946 N.W.2d 677 (2020)
- State v. Marco, 230 Neb. 355, 432 N.W.2d 1 (1988)
- State v. Heitman, 262 Neb. 185, 629 N.W.2d 542 (2001)
- State v. McKay, No. A-92-057, 1993 WL 13458 (Neb. App. Jan. 26, 1993)
- U.S. v. Gigante, 982 F. Supp. 140 (E.D.N.Y. 1997)
- Word v. United States, 589 F. Supp. 806 (S.D.N.Y. 1984)
- State v. Less, 170 W. Va. 259, 294 S.E.2d 62 (1981)
- People v. Glubo, 5 N.Y.2d 461, 158 N.E.2d 699, 186 N.Y.S.2d 26 (1959)
- State v. Jones, 296 Neb. 494, 894 N.W.2d 303 (2017)
- State v. Wheeler, 308 Neb. 708, 956 N.W.2d 708 (2021)
- State v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000)
- State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008)
- State v. Dominguez, 290 Neb. 477, 860 N.W.2d 732 (2015)
- State v. Figures, 308 Neb. 801, 957 N.W.2d 161 (2021)

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