

SUPREME COURT OF NEBRASKA

State of Nebraska v. Edward Robinson, Jr., 272 Neb. 582

724 N.W.2d 35 (2006) · No. No. S-05-107 · Decided December 1, 2006

SUMMARY

Edward Robinson, Jr. was convicted in Nebraska of first degree murder and use of a deadly weapon to commit a felony in connection with the shooting death of Herbert Fant. The opinion discusses witness testimony, vehicle identification, cellular telephone records and location data, eyewitness identification, and related trial issues in Robinson's appeal.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Hannon, Judge, Retired
JURISDICTION	Nebraska
DECIDED	December 1, 2006
DOCKET	No. S-05-107
DISPOSITION	affirmed
PROCEDURAL POSTURE	Robinson appealed jury convictions for first degree murder and use of a deadly weapon to commit a felony, along with consecutive sentences, including habitual-criminal enhancement.
STANDARD OF REVIEW	Batson findings and determinations regarding race-neutral explanations for peremptory challenges are reviewed for clear error. Evidentiary rulings under the Nebraska Evidence Rules are reviewed for abuse of discretion, subject to the applicable evidentiary rule. Sufficiency of the evidence is reviewed by asking 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 motion for new trial based on prosecutorial misconduct is reviewed for abuse of discretion. Retention or removal of a juror is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Edward Robinson, Jr. v. State of Nebraska

TOPICS

criminal procedure evidence jury selection prosecutorial misconduct appellate procedure

PRACTICE AREAS

criminal law criminal procedure evidence appellate procedure sentencing

QUESTIONS PRESENTED

1. Whether the State exercised a peremptory challenge in violation of *Batson v. Kentucky*.
2. Whether cellular telephone records were admissible under the business-records exception to the hearsay rule.
3. Whether cellular tower-location data required a Daubert hearing before admission.
4. Whether a fur-lined coat found with Robinson's nephew was relevant and unfairly prejudicial.
5. Whether the evidence was sufficient to support convictions for first degree murder and use of a deadly weapon to commit a felony, including deliberate and premeditated malice.
6. Whether the prosecutor committed reversible misconduct in opening and closing arguments.
7. Whether evidence of Robinson's federal guilty plea established the prior conviction and representation by counsel necessary for habitual-criminal enhancement.
8. Whether the trial court abused its discretion in delaying removal of two jurors.

HOLDINGS

1. The trial court did not clearly err in finding that Robinson failed to prove purposeful racial discrimination in the State's peremptory challenge of juror No. 278.
2. The cellular telephone records were admissible as business records because the underlying data were generated contemporaneously and maintained in the regular course of the communications companies' businesses; preparing printouts for trial did not change their character.
3. No Daubert hearing was required because the records contained historical call data rather than expert opinions, and the testimony explaining the data did not offer an opinion based on a scientific methodology.
4. The coat was relevant and was not subject to exclusion for unfair prejudice.
5. The evidence was sufficient for a rational jury to find that Robinson killed Fant purposely and with deliberate and premeditated malice.
6. The claimed prosecutorial misconduct did not warrant reversal because most claims were not preserved and the preserved argument concerning vehicle customization did not cause a substantial miscarriage of justice.
7. The certified plea agreement, guilty-plea petition, and federal judgment sufficiently established Robinson's prior conviction and representation by counsel, supporting the habitual-criminal finding.

8. The trial court did not abuse its discretion in removing the jurors when it did, and Robinson failed to establish prejudice or preserve a mistrial claim.

KEY QUOTATIONS

“The final step involves evaluating the persuasiveness of the justification proffered by the prosecutor, but the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike.” (724 N.W.2d at 59)

“Since Broer offered no expert opinion, his testimony presented no basis for an inquiry into his reasoning or methodology pursuant to Daubert v. Merrell Dow Pharmaceuticals, Inc.” (724 N.W.2d at 69)

“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.” (724 N.W.2d at 73)

“The trial court in this case, faced with placing its final alternate juror on the panel in an early stage of a long and complicated proceeding, appropriately exercised its discretion in deciding whether and when to remove juror No. 22 from the jury.” (724 N.W.2d at 80)

FACTUAL BACKGROUND

The State alleged that Robinson fatally shot Herbert Fant in the parking lot of a Popeyes restaurant in Omaha after Robinson became angry over an argument involving Robinson's wife and the victim. Witnesses described an altercation, multiple gunshots, vehicles associated with Robinson and his family, and telephone calls placing Robinson's cellular telephone near the crime scene. The prosecution relied substantially on eyewitness testimony, cellular telephone records and tower-location data, a coat found with Robinson's nephew, and evidence of a prior federal drug-conspiracy conviction for habitual-criminal enhancement.

PROCEDURAL HISTORY

Robinson was charged by information with first degree murder and use of a deadly weapon to commit a felony; an amended information added a habitual-criminal allegation. After a jury convicted him, the district court found him to be a habitual criminal and imposed life imprisonment for murder and a consecutive 10-year sentence for use of a deadly weapon. The Nebraska Supreme Court rejected all assignments of error and affirmed.

DISPOSITION

affirmed

CASES CITED

- Batson v. Kentucky, 476 U.S. 79 (1986)
- Rice v. Collins, 546 U.S. 333 (2006)
- State v. Lowe, 267 Neb. 782, 677 N.W.2d 178 (2004)
- Johnson v. California, 545 U.S. 162 (2005)
- Hernandez v. New York, 500 U.S. 352 (1991)

- Miller-El v. Dretke, 545 U.S. 231 (2005)
- People v. Johnson, 47 Cal. 3d 1194, 767 P.2d 1047, 255 Cal. Rptr. 569 (1989)
- State v. Myers, 258 Neb. 300, 603 N.W.2d 378 (1999)
- State v. Bronson, 242 Neb. 931, 496 N.W.2d 882 (1993)
- Purkett v. Elem, 514 U.S. 765 (1995)
- Transport Indemnity Co. v. Seib, 178 Neb. 253, 132 N.W.2d 871 (1965)
- State v. Watson, 192 Neb. 44, 218 N.W.2d 904 (1974)
- Omaha World-Herald Co. v. Nielsen, 220 Neb. 294, 369 N.W.2d 631 (1985)
- State v. Anglemeyer, 269 Neb. 237, 691 N.W.2d 153 (2005)
- U.S. v. Salgado, 250 F.3d 438 (6th Cir. 2001)
- U.S. v. Fujii, 301 F.3d 535 (7th Cir. 2002)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Schafersman v. Agland Coop., 262 Neb. 215, 631 N.W.2d 862 (2001)
- City of Lincoln v. Realty Trust Group, 270 Neb. 587, 705 N.W.2d 432 (2005)
- State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006)
- State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006)
- State v. Harms, 263 Neb. 814, 643 N.W.2d 359 (2002)
- State v. Jacob, 253 Neb. 950, 574 N.W.2d 117 (1998)
- State v. Beeder, 270 Neb. 799, 707 N.W.2d 790 (2005)
- State v. King, 269 Neb. 326, 693 N.W.2d 250 (2005)
- State v. Hall, 268 Neb. 91, 679 N.W.2d 760 (2004)
- State v. Harrison, 264 Neb. 727, 651 N.W.2d 571 (2002)
- State v. Thomas, 262 Neb. 985, 637 N.W.2d 632 (2002)