

NEBRASKA SUPREME COURT

State v. Jacob

309 Neb. 401 (2021) · No. No. S-20-584 · Decided June 4, 2021

SUMMARY

The Nebraska Supreme Court affirmed the denial of Steven Jacob’s motion for forensic DNA testing under Nebraska’s DNA Testing Act and his related requests for appointed counsel and to alter or amend the judgment. The court held that testing the shell casings, cartridge, and potential biological evidence would not produce noncumulative, exculpatory evidence relevant to Jacob’s wrongful-conviction claim. The court also rejected Jacob’s challenge concerning the bill of exceptions.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Funke, J.; Miller-Lerman, J.; Cassel, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	June 4, 2021
DOCKET	No. S-20-584
DISPOSITION	affirmed
PROCEDURAL POSTURE	Steven Jacob appealed the Lancaster County District Court's denial of his motion for forensic DNA testing under Nebraska's DNA Testing Act, denial of appointment of counsel, denial of a motion to alter or amend, and alleged failure to provide the requested bill of exceptions.
STANDARD OF REVIEW	A motion for DNA testing, appointment of counsel under the DNA Testing Act, and a motion to alter or amend are reviewed for abuse of discretion. Factual findings related to a DNA-testing motion are reviewed for clear error.
PRECEDENTIAL VALUE	Published precedential opinion of the Nebraska Supreme Court.
PARTIES	Steven Jacob v. State of Nebraska

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Jacob's motion for DNA testing under Neb. Rev. Stat. § 29-4120(5)(c).
2. Whether the district court abused its discretion by denying appointment of counsel under the Nebraska DNA Testing Act.
3. Whether the district court erred or abused its discretion in deeming Jacob's motion to alter or amend abandoned and denying it.
4. Whether the district court failed to provide the correct bill of exceptions for appellate review.

HOLDINGS

1. The district court properly denied DNA testing because the requested testing would not produce noncumulative, exculpatory evidence relevant to Jacob's wrongful-conviction claim.
2. The nonpresence of an individual's DNA profile in a biological sample does not preclude that individual from having been present or possessing the tested item; it shows only that the individual's DNA was not present in the specific sample tested.
3. The district court did not abuse its discretion by denying appointment of counsel because Jacob failed to show that DNA testing may be relevant to his wrongful-conviction claim.
4. Even assuming the district court erred by deeming Jacob's motion to alter or amend abandoned for failure to comply with the local hearing-notice rule, Jacob was not deprived of a substantial right because the Supreme Court independently concluded that denial of DNA testing was proper.
5. Jacob's bill-of-exceptions arguments were meritless because the bill of exceptions had been filed, contained the materials from the DNA-testing hearings, and the prior trial records remained part of the case and available for review.

KEY QUOTATIONS

“DNA evidence is not a videotape of a crime, and testing only shows whether the blood in question belonged to the person tested against.” (at 414)

“Thus, the nonpresence of an individual’s DNA profile in a biological sample does not preclude that individual from having been present or in possession of the item tested.” (at 413)

FACTUAL BACKGROUND

Jacob was convicted of the 1989 shooting deaths of Melody Hopper and James Etherton. Crime-scene evidence included shell casings, a live 9-mm cartridge, Jacob's fingerprints on a removed storm window, evidence that Jacob owned a 9-mm pistol, eyewitness identification, and incriminating statements attributed to Jacob. Jacob sought modern DNA testing of the casings, cartridge, slugs, and a living-room gauze sample, arguing that testing might show another person's DNA and support theories that he was not the shooter. The district court found that any anticipated results would be inconclusive and would not produce noncumulative, exculpatory evidence.

PROCEDURAL HISTORY

Jacob was convicted after retrial of two murders and related firearm offenses, and his convictions and sentences were affirmed on appeal. In 2019 he sought DNA testing of shell casings, an unfired cartridge, and possible biological evidence from the crime scene. The district court denied testing, appointment of counsel, and in forma pauperis status; it later deemed his motion to alter or amend abandoned and denied it. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Jacob, 253 Neb. 950, 574 N.W.2d 117 (1998)
- State v. Nolan, 283 Neb. 50, 807 N.W.2d 520 (2012)
- State v. Jacob, 242 Neb. 176, 494 N.W.2d 109 (1993)
- State v. Buckman, 267 Neb. 505, 675 N.W.2d 372 (2004)
- State v. Myers, 304 Neb. 789, 937 N.W.2d 181 (2020)
- State v. Dean, 270 Neb. 972, 708 N.W.2d 640 (2006)
- State v. Lotter, 266 Neb. 758, 669 N.W.2d 438 (2003)
- State v. Ildefonso, 304 Neb. 711, 936 N.W.2d 348 (2019)
- State v. Amaya, 298 Neb. 70, 902 N.W.2d 675 (2017)
- Lombardo v. Sedlacek, 299 Neb. 400, 908 N.W.2d 630 (2018)
- Bryson L. v. Izabella L., 302 Neb. 145, 921 N.W.2d 829 (2019)
- State v. Myers, 301 Neb. 756, 919 N.W.2d 893 (2018)