

# State v. Pester

**Case Number**

S-15-0530

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January 26, 2016

**Court Number**

Scotts Bluff

**Case Summary**

S-15-0530 State v. Richard Pester (Appellant)

Scotts Bluff County, Judge Randall L.Lippstreu

Attorneys: Bell Island (Island & Huff PCLLO) (Appellant) --- Nathan A. Liss (Attorney General's Office) --- Matthew A. Dodd (Amicus Curiae, National College of DUI Defense)

Criminal: DUI, 2nd offense; Refusal to submit to a chemical test

Proceedings below: Appellant was found guilty and the charge was enhanced to a 2nd offense. He was sentenced to a term of probation and his license was revoked for a period of one year. Appellant filed a Petition to Bypass the Court of Appeals which was granted by the Nebraska Supreme Court.

Issues: 1. The Court erred in determining the criminal charge of Refusal to Submit to a Chemical Test was constitutional. 2. The county court erred in overruling his Motion to Suppress where the contact was for trespassing and there was no probable cause to believe Richard Pester was operating or in actual physical control of a motor vehicle while under the influence of alcohol on public property or private property open to public access. 3. The county court erred in failing to direct a verdict/ find insufficient evidence for the conviction where Richard Pester was in actual physical control on property which was not open to public access.

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