

# State v. Munoz

**Case Number**

S-18-0050

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April 25, 2019

**Court Number**

Scotts Bluff

**Case Location**

Lincoln

**Case Summary**

S-18-0050 State v. Lucio P. Munoz (Appellant)

Scotts Bluff County District Court, Judge Leo Dobrovlny

Attorneys: Douglas J. Peterson & Nathan A. Liss (Attorney General's Office) --- Kelly S. Breen (Nebraska Commission on Public Advocacy) (Appellant)

Criminal: 1st degree murder; use of deadly weapon to commit felony; prosecutorial misconduct; ineffective assistance

Proceedings below: Following a jury trial, Appellant was convicted and sentenced to 20 to 40 years imprisonment.

Issues: 1) The prosecution must base its opening statement on the evidence to be adduced at trial and assertion upon matters not in evidence are improper and constitute prosecutorial misconduct when intended to mislead the jury depriving defendant of his right to due process and a fair trial, 2) Appellant was denied effective assistance of counsel by trial counsel's failure to object to prosecutor's opening statement, 3) the trial court committed plain error by permitting witness Martin Brady to invoke his 5th Amendment privilege in the presence of the jury in contravention to the dictate of Neb. Rev. Stat. §27-513(2) (Reissue 2016), 4) Appellant was denied effective assistance of counsel by trial counsel's failure to demand compliance with the statutory directive of Neb. Rev. Stat §27-513 (Reissue 2016), and 5) trial counsel's performance was ineffective by failing to challenge blood spatter evidence under Neb. Rev. Stat. §§27-402; 27-403 (Reissue 2016).

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