

State v. Harris (20)

Case Number

S-19-0130)

S-19-0133)

Case Audio

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Call Date

October 29, 2019

Case Time

9:00 AM

Court Number

Douglas

Case Location

Lincoln

Court Type

District Court

Case Summary

S-19-0130, S-19-0133 State of Nebraska (Appellant) v. Jack E. Harris (Appellee)

Douglas County District Court, Judge William Zastera, Judge Jodi L. Nelson

Attorneys: Douglas J. Peterson, James D. Smith (Office of the Attorney General, for Appellant); Sarah P. Newell (Nebraska Commission on Public Advocacy, for Appellee/Cross-Appellant)

Civil: Speedy trial; Post-conviction relief

Proceedings below: Nine days before Judge Zastera retired, he entered an order granting Appellant a new trial based on arguments made at the July 17, 2017 hearing on the motions, and based on evidence admitted in June 28, 2013 evidentiary hearing that related to the third postconviction motion, the untimely motion for new trial, and the writ of error *coram nobis* dismissed by *Harris*, 292 Neb. 186 (2015). Regarding exhibit 2006, Judge Nelson sustained Appellant's objections on confrontation clause and relevance grounds. Regarding exhibit 2012, Judge Nelson overruled the State's objection and received the evidence. Regarding the three substantive motions, Judge Nelson issued an order on January 30, 2019, sustaining Appellant's motion for discharge on speedy trial grounds and finding other motions moot. As part of her ruling, she determined that the State's original appeal of the September 21, 2017 order granting Appellant a new trial lacked jurisdiction because the State's motion for reconsideration was a timely filed motion to alter/amend that stopped the running of the time for appeal. She also determined that the September 21, 2017 order was civil in nature and was itself a final appealable order as an order affecting a substantial right in a special proceeding.

Issues: Whether the trial court erred in 1) finding that the order granting the motion for a new trial was a final, appealable order; 2) determining that the State could move the court to reconsider its order sustaining Appellee's motion for new trial and finding moot Appellee's motion to dismiss the State's motion for reconsideration as untimely and/or improvidently

filed; 3) sustaining Appellee's motion for a speedy trial discharge; and 4) refusing to receive in evidence the State's affidavit for the speedy trial discharge hearing.

Schedule Code

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