

Extended Case Summary for:

A 23-0787 – State v. Furman (Appellant)

Following a jury trial, Appellant was convicted on one count of DUI – Second Offense. This charge stemmed from an incident that occurred on the morning of July 21, 2021. On that morning, an off-duty UNL police officer drove past a vehicle parked in a ditch and noticed an occupant inside. The off-duty officer investigated the vehicle and discovered Appellant sitting in the driver's seat. Appellant told this officer that he had been drinking the night before and pulled over on his way home because he was too tired to drive. The officer called 9-1-1 and an additional officer arrived who initially detained Appellant in his police vehicle. Both officers noticed that Appellant still appeared to be intoxicated. Following that, two additional officers arrived who conducted field sobriety tests on Appellant, and after he failed, they arrested him and conducted a chemical breath test which displayed a blood-alcohol level of .125.

In a pre-trial motion to suppress the evidence of his seizure and arrest, Appellant challenged the off-duty officer's actions arguing that he acted outside of his jurisdiction and illegally detained him without having reasonable suspicion that a crime was committed. He also challenged the responding officer detaining him in the police cruiser and the other officers' administration of field sobriety tests without having reasonable suspicion. Lastly, he argued the officers did not have probable cause to arrest him and conduct a chemical breath test. The county court ruled against Appellant on each argument and denied his motion. At trial, the State offered five exhibits into evidence in a single offering. One of these exhibits, exhibit 14, was an uncertified copy of Title 177, which outlines the proper procedure to be utilized in conducting a chemical breath test. Appellant's attorney objected to the admission of these five exhibits based on lack of foundation and hearsay. The court overruled those objections.

On appeal to the district court, Appellant asserted his conviction should be reversed because the county court erred in (1) admitting his chemical test result because (a) the uncertified copy of Title 177 was hearsay and lacked sufficient foundation and (b) the State failed to prove the chemical test result was obtained in accordance with the methods approved in Title 177; (2) overruling his motion to suppress because (a) he was seized by an officer outside his primary jurisdiction, (b) there was not reasonable suspicion for his seizure, (c) there was not reasonable suspicion to conduct field sobriety tests, and (d) there was no probable cause to arrest him; and (3) allowing one of the responding officer to give opinion testimony at trial that a person who is not impaired will not have horizontal gaze nystagmus. The district court did not agree with Appellant and affirmed the county court's judgments and sentence.

On appeal to the Court of Appeals, Appellant now assigns the district court erred in affirming the county court's rulings that (1) admitted the results of chemical breath test; (2) overruled his motion to suppress related to his seizure by an officer acting outside their jurisdiction; (3) overruled his motion to suppress related to his seizure without probable cause; (4) overruled his motion to suppress related to field sobriety tests being conducted without reasonable suspicion; and (5) overruling his objection at trial to an officer's testimony equating horizontal gaze nystagmus to driving while impaired.