



U.S. Supreme Court lets Lincoln man's possession conviction stand

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June 24, 2019

The U.S. Supreme Court will let a Lincoln man's drug possession conviction stand.

In an order issued Monday, the country's highest court denied the petition of cert in Colton Sievers' case, which Fourth Amendment scholars had hoped could be a chance for them to give lower courts — and law enforcement officers — guidance about when they can stop drivers.

Last week, Lancaster County Public Defender Joe Nigro said he knew it was a long shot that they would take up the case. But it was the first time in his 35 years working at the office that he could remember attorneys coming to them wanting to help take one of their cases to the U.S. Supreme Court. He said groups ranging from the CATO Institute, a libertarian think-tank, to the ACLU, which defends civil rights, were "bothered by this."

By this, Nigro was referring to a Nebraska Supreme Court decision, which upheld Sievers' felony meth possession conviction, calling the traffic stop that led to Sievers' arrest Feb. 26, 2016, a "suspicionless information-seeking stop" that was reasonably based on the circumstances. Law enforcement said they hadn't seen him do anything illegal before they stopped him near 10th and South streets.

Sievers had admitted he had smoked pot at the house police were watching, but when they asked if they could search the truck, he said no.

Officers radioed a supervisor, who told them to search the truck, then arrested Sievers after the search turned up two small plastic bags with just over 3 grams of meth inside a soda can near the center console.

District Judge Robert Otte found him guilty and sentenced him to 90 days in the county jail.

The Nebraska Attorney General's office argued the stop was based on reasonable suspicion because Sievers had been parked outside a meth dealer's house and beside the dealer's car. The state Supreme Court affirmed Sievers' conviction despite finding that it wasn't.

In a supplemental opinion on Dec. 7, the court said: "Despite the unusual circumstances here, the totality of these circumstances arising from the critical mass of law enforcement concerns was sufficient to justify this investigatory stop."

"We are disappointed by the Supreme Court's denial of cert," Nigro wrote in a statement. "We always knew it was a long shot, but it was worth taking a chance because we continue to believe

the Nebraska Supreme Court was wrong. Legal scholars from all sides around the country agreed with us."

Orin Kerr, a USC professor and Fourth Amendment scholar, argued that the U.S. Court could use the case to settle disagreement among lower courts in applying their earlier *Lidster* decision, upon which the Nebraska Supreme Court had relied.

In a response, Austin Relph, assistant Nebraska Attorney General, argued that cert should be denied "because it is well established that this Court reviews judgments, not opinions." The question is if the judgment is correct, not the grounds, he said, taking the position that the officers did have reasonable suspicion for the stop.

On Monday morning, when the decision came out, Sievers was back in the county jail. He'd been arrested Sunday on suspicion of possession of a controlled substance.