

No. 21 - 5366

IN THE  
SUPREME COURT OF THE UNITED STATES

ABRAM K. SOLLMAN

— PETITIONER

(Your Name)

vs.

STATE OF NEBRASKA

— RESPONDENT(S)

**ORIGINAL**

ON PETITION FOR A WRIT OF CERTIORARI TO

**FILED**

**JUL 27 2021**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Nebraska Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Abram K. Sollman

(Your Name)

P.O. Box 22500, 4201 So. 14th Street

(Address)

Lincoln, Ne. 68542-2500

(City, State, Zip Code)

402.471.3161

(Phone Number)

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SUPREME COURT, U.S.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

QUESTION(S) PRESENTED

I.

WHETHER OR NOT THE NEBRASKA COURTS RELIANCE ON A WITNESS STATEMENTS (Sean Nowling) INDUCED THE STATE'S (Respondent) CASE-IN-CHIEF VIA ERRONEOUS OR PREJUDICIAL HEARSAY EVIDENCE WHICH CAUSED THE TRIAL BY JUDGE TO FINDING OF GUILT VERDICT AGAINST PETITIONER, CONTRARY TO THE STATE AND FEDERAL CONSTITUTIONS, COMPORTING TO THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS, AND NEBRASKA CONSTITUTION, UNDER ARTICLE I, §§ 3,9,11, AND 12, RESPECTIVELY.

II.

WHETHER OR NOT THE NEBRASKA COURTS FINDINGS AND AFFIRMATIONS COMPORTED TO SUBSTANTIVE CONSTITUTIONAL LAW, IN THIS CRIMINAL MATTER.

III.

WHETHER OR NOT PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE STATE AND FEDERAL CONSTITUTIONS, CONCERNING THE "DOUBLE JEOPARDY" CLAUSE, WAS VIOLATED IN THIS CRIMINAL MATTER.

IV.

WHETHER OR NOT THE DICTUM ISSUED BY THE NEBRASKA APPELLATE COURTS @ State v. Sollman, 29 Neb.App.356 (2021) (A-20-172), AND THE NEBRASKA SARPY COUNTY DISTRICT COURT, @ CR19-244, ILLUMINATED SUFFICIENT AND SUBSTANTIVE REASONINGS INVOLVING, PROXIMATE CAUSE, INTERVENING CAUSE, CAUSAL LINK, NEGLIGENCE, TRIAL EVIDENCE, MIRANDA RIGHTS, CONFESSIONS, DRUNK DRIVING, AND DIRECTED VERDICT.

V.

WHETHER OR NOT THIS INSTANT CAUSE FOR WRIT OF CERTIORARI SUFFICE VIA PETITIONER'S NOW CHALLENGED ATTACK HEREIN TO THE CONSTITUTIONALITY OF NEBRASKA STATUTE(S).

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CASES	PAGE NUMBER
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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[x] reported at A-20-172; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the Nebraska Court of Appeals court appears at Appendix B to the petition and is

[x] reported at 29 Neb.App. 356 (State v. Sollman); or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was April 12, 2021. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Neb.Rev.Stat. § 28-306(3)(b) Motor Vehicle Homocide-DUI (Driving Under the Influence)-Felony IIA

Neb.Rev.Stat. § 60-6,196 DUI (Driving Under the Influence)-First Offense, Misdemeanor

Neb.Rev.Stat. § 60-6,213 Reckless Driving-First Offense Misdemeanor

Neb.Rev.Stat. § 50-6,179.02 Use of handheld mobile telephone while driving prohibited

Neb.Rev.Stat. § 27-303

U.S.Const.Amend.5

U.S.Const.Amend.14

Neb.Rev.Stat. § 27-602

Neb.Rev.Stat. § 27-613

Neb.Rev.Stat. § 27-614

Neb.Rev.Stat. § 27-615

Neb.Rev.Stat. § 27-802

Neb.Rev.Stat. § 60-6,148

Neb.Rev.Stat. § 39-6,133

## STATEMENT OF THE CASE

Petitioner Abram K. Sollman, was convicted and sentenced in this criminal matter in the State of Nebraska, for felony, **Motor Vehicle Homocide**, misdemeanors attached to said felony convictions above, DUI (Driving Under the Influence), first offence, and Reckless Driving, first offence. Petitioner received a sentence of 14-to-20 years for the felony **Motor Vehicle Homocide**; 60 days for **DUI**-first offence, and 90 days for **Reckless Driving**, respectively.

The **crux** of petitioner's challenge to the Nebraska Courts decisions, judgments, and opinions, involve the constitutionality of Nebraska statutes (above-listed), and law of the case doctrine, which precluded and hindered petitioner from challenging other imperatives that were pivotal to the incident leading up to the charges lodged against him in Nebraska.

In sum, petitioner was traveling on a Nebraska road, en route to his destination, when he encountered another vehicle driver petruding its way into the intersection of the street lane in which petitioner was attempting to cross (**SEE Appendix E**). It was determined that the female driver of this said vehicle was operating and utilizing her personal cell phone, i.e. texting-while-driving. Based on the diagram of this said action, both parties (petitioner driver and female driver of other vehicle) committed equal-wrongs constituting traffic violations-misdemeanors. A collision between both said parties vehicles ensued. The female driver in vehicle 1 passed away from her injuries sustained. Petitioner driver in vehicle 2 suffered substantial injuries, and was hospitalized this same day after the collision. (**SEE Appendix F**). Charges were lodged against petitioner as setout above.

Petitioner in the instant seeks this Honorable Court review emphatically requesting that writ of certiorari issues based upon the unconstitutional decisions and opinions elicited by the Nebraska Courts (**Appendix A,B, and D**). Germane to this quest are constitutional questions purporting to Nebraska Courts dictum that precluded and hindered petitioner from offering and illuminating a defense of equivalent substantive principles, indicative to the shared-reality encompassing the female driver-victim culpability, via the traffic violation/infraction, driving while texting (**Neb.Rev.Stat. § 60-6,179.02**). Secondly, the underlying charge petitioner was thus convicted and thereafter, sentenced for, pose and belies a conundrum of constitutional issues herein complained. The Nebraska Courts erroneously propagated.

## REASONS FOR GRANTING THE PETITION

The Nebraska Courts, to include, the Nebraska Supreme Court, Nebraska Court of Appeals, and the Sarpy County District Court, in Nebraska; all said courts decisions involving petitioner's convictions and sentences defies justice and runs afoul of the constitutional safeguards guaranteed by the **5th and 14th Amendments**, of the United States Constitution, and Nebraska Constitution, **Article I, §§ 3 and 9**, respectively.

It behooves petitioner to apprise this Honorable Court that the decision and opinion rendered by Nebraska Courts, particularly, the Nebraska Court of Appeals, at **29 Neb.App. 356 (2021)**, was erroneously adjudged, when considering the totality of circumstances involved in the collision between petitioner and victim. A review of the case file and record as presented herein (**Appendix A through F**), illuminate that the courts of Nebraska prejudicially expressed deference to the plaintiff-respondent, and egregiously overlooked vital and pertinent law of the case doctrine that would have suffice a premise of equal magnitude. Petitioner did not receive a fair trial, and the record read whole, by this Court, shall affirm such. In brevity, the following rationale desiring a writ to issue on petitioner's part, by this superior court entails:

(1) The reliance by the Nebraska Courts regarding state witness, Sean Nowling, and his paltry and questionable testimony or statements, were residual hearsay evidence in violation of petitioner's due process rights (5th and 14th Amendments to U.S.Constitution, and Article I, § 3 of Nebraska Constitution). Nowling made many contradictory statements, and his testimony of record, infringed significantly on petitioner's rights to treat such a witness, as hostile, afforded by state and federal rules of evidence; and Nowling testimony should have been impeached, as a matter of law.

Worse, the lower district court of Sarpy County, and the Nebraska Appellate Court(s) erred and violated petitioner's right to a fair trial by relying on and assessing state-witness Nowling testimony, as such testimony was presumptive under Neb. Rev. Stat. § 27-303, and elicit the lack of knowledge (witness may not testify), under Neb. Rev. Stat. § 27-602; inadmissible extrinsic evidence of prior inconsistent statements by Nowling, under Neb. Rev. Stat. § 27-613; unlawful and prohibited consideration of witness testimony and statements by the judge during trial, under Neb. Rev. Stat. § 27-614; Nowling testimony should have been excluded altogether based upon the precepts established by Neb. Rev. Stat. § 27-615; and the Nebraska Courts, in this matter, failed to apply the proper remedies provided under The Hearsay Rule under Neb. Rev. Stat. §§ 27-802 et seq., concerning Nowling's testimony and statements. To the extent that Nowling's involvement is not probative and more presumptive, it is constitutionally wrong.

It is axiomatic that petitioner did not carry full culpability via the accident and the death of the victim, to be charged with **felony motor vehicle homicide**. A review of Appendix E and Appendix F presents an conundrum of theories, but rest assure, the victim (may she rest in peace) propagated the bulk and most culpability, than that of petitioner, and Appendix E affirms such, and Appendix F predisposes equal assessment of blame on petitioner and victim involved. Nonetheless, the askew judgment and decisions by the Nebraska Courts, aim, absent a defense of negligence on victim, blame upon petitioner, devoid of lawful consideration to other **prima facie showing, i.e., implied malice, negligence by victim, sudden emergency, and more than one proximate cause of victim's death in a prosecution for reckless vehicular homicide**. The Nebraska Courts did not adhere, nor appropriate any legal consideration to these said imperatives. Instead, it used negligence, proximate cause, contributory negligence, torts, and petitioner's driving-traffic violations, as scapegoats to fasciate is unlawful and unconstitutional dictum.

Accordingly, in a prosecution for homicide arising out of the operation of a motor vehicle, where there is some evidence of a sudden emergency, and sudden emergency is the defendant's (aka petitioner) sole defense, the court's failure to consider or adjudge on such matter is prejudicial error. People v. Lopez, 97 P3d 277 (2004). Thus, contributory negligence is not

an intervening cause, or the proximate cause, that exempts or forbids a defense of negligence. The courts would have to consider the victim in this matter liable and culpable, and not a full reliance or culpability on the part of petitioner herein. The term "**implied malice**" arise because the facts of this case, unequivocally reveal that the victim in this matter, was clearly utilizing her cellular phone to text. Hence, petitioner's driving, allegedly recklessly, or under the influence does not vitiate the blame incurred on the victim's behalf; such exudes implied malice. People v. Talamantes, 11 Cal.App.4th 968 (1992). Evidence of the other driver's (victim in this matter) conduct failed to support intervening cause. (SEE State v. Filchock, 166 Ohio App.3d 611 (2006)). Petitioner herein was prejudice by the Nebraska Courts, and imminent and overriding intervention from this superior court is warranted, effectively reversing the Nebraska Courts decisions, that affirmed petitioner's conviction and sentence exhibited herein.

The Nebraska Courts further committed reversible error when it applied affirmation to the adjudged sentences for same offense, in violation of petitioner's right to be free from double jeopardy (SEE Appendix D). Such error existing against the detriment of petitioner, for the charges of **Drining Under the Influence** twice (as shown in said exhibit and the Nebraska Appellate Court decision-Appendix B), runs afoul of petitioner's constitutional rights, in that petitioner was sentenced and convicted for multiple punishments under the same charge. (SEE Blockburger v. U.S., 284 U.S. 299 (1932)). The common-element test for **Double Jeopardy** was not applied or considered by the Nebraska Courts; and such mandates prejudicial and plain error. (SEE State v. Huff, 282 Neb. 78 (2011)).

Taken as a whole, the Nebraska Courts got it all wrong, in this criminal matter, via the lower court bench trial before the judge, and again and again, in the Nebraska Appellate Courts, because the statutes and caselaw relied upon, in all phases by said courts, were myopic. And petitioner invites this superior court to review the Nebraska Courts interpretation, as he now, in the instant make a constitutional challenge, to the dictums rendered in all phases in which the Nebraska Courts made judgment and opinion, against his interests. The Nebraska Courts prejudicially failed to consider Neb.Rev.Stat Stat. § 50-6,179.02 (Unauthorized Use of handheld Mobile Telephone While Driving) and Neb.Rev.Stat. § 39-6,133 (Preferential Right-of-way; stop and yield signs), inasmuch as the obvious and tantamount blame on the victim's part.

To succeed in a typical facial attack on the constitutionality of a statute, a party would have to establish that no set of circumstances exists under which the statute would be valid, or that the statute lacks any plainly legitimate sweep. U.S. v. Stevens, 130 Sct. 1577 (2010). This is the case in this matter at bar. The statute in Nebraska, Neb. Rev. Stat. § 28-306 and Neb. Rev. Stat. § 60-6,196, (both inclusive of Driving Under the Influence charges), imposed double penalty via conviction and sentence against petitioner's interests. This leads to the inquiry as to whether the statutes attempts to cover so much, that if effectively covers nothing. The construction of § 28-306 decides the constitutional question, but is an error in this case, inasmuch that petitioner was deprived of the lesser-included charge or offense exuding misdemeanor motor vehicle homicide, a charge befitting his blame. (SEE Neb. Rev. Stat. § 60-6,148, § 60-6,213, § 39-6,133). Moreover, petitioner's attack on Nebraska constitutionality of an ambiguous statute ought to be adjudged.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July, 26th 2021

**Petitioner pro se**  
**Abram K. Sollman**  
P.O. Box 22500-211168  
4201 South 14th Street  
Lincoln, Ne. 68542-2500  
402.471.3161

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ABRAM K. SOLLMAN — PETITIONER  
(Your Name)

VS.

STATE OF NEBRASKA — RESPONDENT(S)

**PROOF OF SERVICE**

I, Abram K. Sollman, do swear or declare that on this date, July 26th, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Nebraska State Attorney General Office

2115 State Capitol Building

Lincoln, Nebraska, 68509-8920

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 26<sup>th</sup> day of July, 2021



(Signature)

July, 2021

MR. ABRAM SOLLMAN #211168  
P.O. Box 22500  
Lincoln, Ne. 68542-2500  
402.471.3161

CLERK OF UNITED STATES SUPREME COURT  
Attn: Michael Gans  
Washington, DC, 20453

RE: WRIT OF CERTIORARI FILING; EXTENDED 150 DAYS; COVID-19;  
INMATE INCARCERATED; LAW LIBRARY CLOSED-DELAYS.....

Dear Clerk,

Hi! I hope this missive finds you doing well and in good health and spirits.

Essentially, I am submitting this missive with my attached Petition for Writ of Certiorari (and its attachments, appendices, etc.), because the applicable filing time of 90 days, and the on-going COVID-19 issue, as well as the closing of the law library days in the facility-institution in which I am housed,

It is my understanding that time via extension has been afforded in which to file my writ, to 150 days. Please take notice of such, and permit my filing regarding this pertinent and exceptional action. Thank you.

Cordially,  
s/Abram Sollman



xc:as/file

