

SUPREME COURT OF KANSAS

State v. Wycoff

Wycoff · No. No. 110,393 · Decided June 30, 2017

SUMMARY

The Kansas Supreme Court, on rehearing, reaffirmed that K.S.A. 2016 Supp. 8-1025, which criminalized refusal to submit to certain testing, is facially unconstitutional. Relying on *State v. Ryce* and considering the United States Supreme Court's decision in *Birchfield v. North Dakota*, the court affirmed dismissal of the charge against Darwin Estol Wycoff.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.; Malone, Senior Judge, assigned; Stegall, J.
JURISDICTION	Kansas
DECIDED	June 30, 2017
DOCKET	No. 110,393
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the Saline District Court's dismissal of a charge alleging that Wycoff violated K.S.A. 2016 Supp. 8-1025. After the court's original decision affirming dismissal, the State sought rehearing-related relief and a stay of the mandate pending the United States Supreme Court's decision in <i>Birchfield v. North Dakota</i> .
STANDARD OF REVIEW	De novo review of the constitutionality of a statute and the district court's dismissal of the charge is implied by the court's independent constitutional analysis.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Kansas v. Darwin Estol Wycoff

TOPICS

- criminal procedure
- statutory interpretation
- fourth amendment
- appellate procedure
- constitutional law

PRACTICE AREAS

- criminal law
- constitutional law
- appellate practice

QUESTIONS PRESENTED

1. Whether K.S.A. 2016 Supp. 8-1025 is facially unconstitutional.
2. Whether the United States Supreme Court's decision in *Birchfield v. North Dakota* altered the Kansas Supreme Court's prior analysis or required reinstatement of the charge against Wycoff.
3. Whether the district court's dismissal of the charge should be affirmed.

HOLDINGS

1. K.S.A. 2016 Supp. 8-1025 is facially unconstitutional.
2. The district court correctly dismissed the charge alleging a violation of K.S.A. 2016 Supp. 8-1025.

KEY QUOTATIONS

“K.S.A. 2016 Supp. 8-1025 is facially unconstitutional.” (syllabus)

“While Birchfield requires some modification of our analysis, nothing in the United States Supreme Court's decision alters the ultimate basis for Ryce I: the state law grounds of statutory interpretation of 8-1025 and the statute on which it depends, K.S.A. 2016 Supp. 8-1001.” (at 2)

FACTUAL BACKGROUND

Wycoff was charged with violating K.S.A. 2016 Supp. 8-1025, a Kansas statute criminalizing refusal to submit to certain blood alcohol testing. The district court dismissed the charge, and the Kansas Supreme Court affirmed. Following the United States Supreme Court's decision in *Birchfield* concerning similar refusal statutes, the Kansas Supreme Court reconsidered the effect of that decision but reached the same result.

PROCEDURAL HISTORY

The Saline District Court dismissed the charge against Wycoff under K.S.A. 2016 Supp. 8-1025. The Kansas Supreme Court originally affirmed in *State v. Wycoff*, 303 Kan. 885, 367 P.3d 1258 (2016), relying on *State v. Ryce*, 303 Kan. 899, 368 P.3d 342 (2016). The court stayed its mandate while awaiting *Birchfield v. North Dakota*, received supplemental briefing, and on rehearing again affirmed the dismissal.

DISPOSITION

affirmed

CASES CITED

- *State v. Ryce*, 306 Kan. ___, ___ P.3d ___ (No. 111,698, this day decided) (Ryce II)
- *State v. Ryce*, 303 Kan. 899, 368 P.3d 342 (2016) (Ryce I)
- *State v. Wycoff*, 303 Kan. 885, 367 P.3d 1258 (2016) (Wycoff I)
- *Birchfield v. North Dakota*, 579 U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016)
- *State v. Ryce*, 303 Kan. 889, 964-72, 368 P.3d 342 (2016)

OPINION

PER CURIAM.

OPINION ON REHEARING

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 110,393

STATE OF KANSAS,

Appellant,

v.

DARWIN ESTOL WYCOFF,

Appellee.

SYLLABUS BY THE COURT

K.S.A. 2016 Supp. 8-1025 is facially unconstitutional.

Appeal from Saline District Court; JARED B. JOHNSON, judge. Original opinion filed 303 Kan. 885, 367 P.3d 1258 (2016). Opinion on rehearing filed June 30, 2017. Affirmed.

Natalie A. Chalmers, assistant solicitor general, and Derek Schmidt, attorney general, were on the supplemental brief for appellant. Brock R. Abbey, assistant county attorney, Ellen Mitchell, county attorney, and Derek Schmidt, attorney general, were on the original brief for appellant.

Roger D. Struble, of Blackwell & Struble, LLC, of Salina, was on the briefs for appellee.

The opinion of the court was delivered by

LUCKERT, J.: Darwin Estol Wycoff, like the defendant in *State v. Ryce*, 306 Kan.

____, ____ P.3d ____ (No. 111,698, this day decided) (*Ryce II*), challenges the constitutionality of K.S.A. 2016 Supp. 8-1025. In *State v. Ryce*, 303 Kan. 899, 368 P.3d

1

342 (2016) (*Ryce I*), we held that 8-1025 is facially unconstitutional. In this case, based on our analysis in *Ryce I*, we affirmed the district court's decision to dismiss the charge against Wycoff that alleged a violation of 8-1025. See *State v. Wycoff*, 303 Kan. 885, 367 P.3d 1258 (2016) (*Wycoff I*).

After we issued our decision in *Ryce I* and *Wycoff I*, the State timely filed a motion seeking to stay the mandate until the United States Supreme Court issued a decision in three consolidated cases addressing a similar issue regarding Minnesota and North Dakota statutes that made it a crime to refuse blood alcohol content testing. We granted that motion and, once the United States Supreme Court issued its decision in *Birchfield v.*

North Dakota, 579 U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), allowed the parties to submit additional briefs.

After considering those additional briefs and the effect of *Birchfield* on *Ryce I* and *Wycoff I*, we once again in *Ryce II* determine that K.S.A. 2016 Supp. 8-1025 is facially unconstitutional. While *Birchfield* requires some modification of our analysis, nothing in the United States Supreme Court's decision alters the ultimate basis for *Ryce I*: the state law grounds of statutory interpretation of 8-1025 and the statute on which it depends, K.S.A. 2016 Supp. 8-1001.

For the reasons more fully set forth in *Ryce I* and *Ryce II*, we accordingly affirm the district court's decision to dismiss the charge against *Wycoff* that alleged a violation of K.S.A. 2016 Supp. 8-1025.

Affirmed.

ROSEN, J., not participating.

2

MICHAEL J. MALONE, Senior Judge, assigned.¹

STEGALL, J., dissenting: For the reasons set forth in my earlier dissent in *State v. Ryce*, 303 Kan. 889, 964-72, 368 P.3d 342 (2016), I dissent.

1

REPORTER'S NOTE: Senior Judge Malone was appointed to hear case No. 110,393 vice Justice Rosen under the authority vested in the Supreme Court by K.S.A. 20-2616.

3