

SUPREME COURT OF KANSAS

State v. Wycoff

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

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.

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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.

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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.

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