

NORTH DAKOTA SUPREME COURT

Richter v. North Dakota Department of Transportation

786 N.W.2d 716 (N.D. 2010) · Decided August 17, 2010

SUMMARY

The North Dakota Supreme Court held that a police officer’s approach to a parked vehicle and nonverbal gesture requesting that a passenger roll down the window did not constitute a seizure under the Fourth Amendment. The court reversed the district court and remanded for reinstatement of the administrative hearing officer’s 365-day driver’s-license suspension.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Maring, Justice; Gerald W. VandeWalle, C.J.; Daniel J. Crothers, J.; Dale V. Sandstrom, J.; Kapsner, J.; Maring, J.; Sandstrom, J.; Walle, J.
JURISDICTION	North Dakota
DECIDED	August 17, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The North Dakota Department of Transportation appealed from a district court judgment reversing an administrative hearing officer's decision suspending Richter's driver's license for 365 days. The North Dakota Supreme Court reversed the district court and remanded for reinstatement of the hearing officer's decision.
STANDARD OF REVIEW	Under the Administrative Agencies Practice Act, the Court reviews the agency decision on the record and affirms unless the order is contrary to law, violates constitutional rights, results from noncompliance with the Act or denial of a fair hearing, lacks factual support by a preponderance of the evidence, or lacks adequate legal and explanatory support. The Court does not make independent factual findings or substitute its judgment for the agency's; it determines whether a reasoning mind could reasonably conclude that the agency's factual findings were proved by the weight of the evidence.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	North Dakota Department of Transportation v. Matthew Richter

TOPICS

judicial review of agency action

administrative law

fourth amendment

search and seizure

preservation of error

PRACTICE AREAS

administrative law

constitutional law

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the police officer's approach to the parked vehicle and nonverbal gesture directing the passenger to roll down the window constituted a seizure under the Fourth Amendment.
2. Whether the officer had reasonable suspicion to seize Richter after detecting alcohol and observing signs of intoxication.
3. Whether Richter preserved and adequately presented a claim that article I, section 8 of the North Dakota Constitution provides greater protection than the Fourth Amendment.

HOLDINGS

1. The officer's approach to the parked vehicle and nonverbal gesture to roll down the window did not constitute a Fourth Amendment seizure because the officer did not block the vehicle, activate flashing lights, order compliance, use threatening language or tone, display a weapon, or otherwise restrain the occupants' liberty by force or show of authority.
2. The seizure occurred only after the officer detected the odor of alcohol and observed Richter's bloodshot eyes and thick speech, at which point the officer had reasonable suspicion to believe Richter was in actual physical control of a motor vehicle while under the influence of alcohol.
3. The Court declined to address Richter's claim that the North Dakota Constitution provides greater search-and-seizure protection because he did not raise it before the hearing officer, did not specifically identify it in his administrative specifications of error, and did not adequately support it with authority on appeal.

KEY QUOTATIONS

"A seizure occurs within the context of the Fourth Amendment only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." (786 N.W.2d at 722, ¶ 15)

"to the extent that Wibben holds a Fourth Amendment stop or seizure occurs whenever a law enforcement officer taps on a window of a parked motor vehicle, we now overrule that decision and follow the rationale of the opinion concurring in the result in Wibben." (786 N.W.2d at 723, ¶ 15)

FACTUAL BACKGROUND

At approximately 1:24 a.m., a Mandan police officer observed a vehicle parked in the rear lot of a closed restaurant, with its engine running and two occupants inside. The officer parked nearby without blocking the vehicle, did not activate flashing emergency lights, approached the passenger side, and made a circular hand

gesture indicating that the passenger should roll down the window. After the window was lowered, the officer smelled alcohol, observed that Richter had bloodshot eyes and thick speech, and learned that Richter had consumed several beers. Richter failed field sobriety tests, was arrested for being in actual physical control of a vehicle while under the influence, and consented to a blood test showing a 0.15 percent blood alcohol concentration.

PROCEDURAL HISTORY

After Richter was arrested for being in actual physical control of a motor vehicle while under the influence of alcohol, the Department initiated a 365-day driver's-license suspension. Following an administrative hearing, the hearing officer rejected Richter's Fourth Amendment challenge and ordered the suspension. The district court reversed, relying on *Wibben v. North Dakota State Highway Commissioner* and concluding that the officer's request or order that Richter's passenger roll down the window was an unconstitutional seizure. The Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court judgment and remand for reinstatement of the administrative hearing officer's decision suspending Richter's driver's license for 365 days.

CASES CITED

- *Abernathey v. Department of Transportation*, 2009 ND 122, ¶¶ 6, 8, 11-15, 768 N.W.2d 485
- *Rist v. North Dakota Department of Transportation*, 2003 ND 113, ¶ 6, 665 N.W.2d 45
- *Sayler v. North Dakota Department of Transportation*, 2007 ND 165, ¶ 7, 740 N.W.2d 94
- *Borowicz v. North Dakota Department of Transportation*, 529 N.W.2d 186, 187-89 (N.D. 1995)
- *Brewer v. Ziegler*, 2007 ND 207, ¶ 4, 743 N.W.2d 391
- *Power Fuels, Inc. v. Elkin*, 283 N.W.2d 214, 220 (N.D. 1979)
- *Wibben v. North Dakota State Highway Commission*, 413 N.W.2d 329, 330-36 (N.D. 1987)
- *State v. Albaugh*, 2007 ND 86, ¶ 11, 732 N.W.2d 712
- *State v. Boyd*, 2002 ND 203, ¶ 6, 654 N.W.2d 392
- *State v. Franklin*, 524 N.W.2d 603, 604-05 (N.D. 1994)
- *City of Jamestown v. Jerome*, 2002 ND 34, ¶¶ 5, 9, 639 N.W.2d 478
- *State v. Langseth*, 492 N.W.2d 298, 300 (N.D. 1992)
- *State v. Koskela*, 329 N.W.2d 587, 589 (N.D. 1983)
- *State v. Smith*, 452 N.W.2d 86, 88 (N.D. 1990)
- *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985)
- *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)

- Adams v. Williams, 407 U.S. 143 (1972)
- INS v. Delgado, 466 U.S. 210, 216 (1984)
- State v. Gahner, 554 N.W.2d 818, 820 (N.D. 1996)
- City of Grand Forks v. Zejdlik, 551 N.W.2d 772, 774 (N.D. 1996)
- State v. Halfmann, 518 N.W.2d 729, 731 (N.D. 1994)
- Dettler v. Sprynczynatyk, 2004 ND 54, ¶¶ 13, 15-16, 676 N.W.2d 799
- Vetter v. North Dakota Workers Compensation Bureau, 554 N.W.2d 451, 454 (N.D. 1996)

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