

SUPREME COURT OF NORTH DAKOTA

State v. Gefroh

2011 ND 153 (N.D. 2011) · Decided August 15, 2011

SUMMARY

The North Dakota Supreme Court affirmed an order suppressing cocaine found in Kevin James Gefroh’s pocket during a traffic stop. The court held that the automobile exception supported a warrantless search of the vehicle after a drug-sniffing dog alerted, but did not justify the warrantless search of Gefroh’s person.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Kapsner; Maring; Crothers
JURISDICTION	North Dakota
DECIDED	August 15, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed an order granting Gefroh's motion to suppress cocaine discovered during a warrantless search of his person.
STANDARD OF REVIEW	The Supreme Court will not reverse a suppression ruling if sufficient competent evidence supports the district court's findings and the decision is not contrary to the manifest weight of the evidence. Whether a factual finding meets a legal standard is a question of law reviewed de novo or fully reviewable on appeal.
PRECEDENTIAL VALUE	precedential
PARTIES	State of North Dakota v. Kevin James Gefroh

TOPICS

- suppression of evidence
- fourth amendment
- search and seizure
- probable cause
- warrant requirement

PRACTICE AREAS

- criminal procedure
- constitutional law
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the automobile exception to the Fourth Amendment warrant requirement permitted officers who had probable cause to search Gefroh's vehicle to conduct a warrantless search of Gefroh's person and pockets.
2. Whether the State preserved for appellate review its challenge to the district court's ruling that the pocket search exceeded the permissible scope of a weapons pat-down.

HOLDINGS

1. The automobile exception to the warrant requirement permits a warrantless search of a vehicle when probable cause exists that the vehicle contains contraband, but it does not authorize a warrantless search of a person's body or clothing merely because the person was present in or driving the vehicle when probable cause arose.
2. The State abandoned and did not preserve for appellate review the issue whether the search of Gefroh's pocket exceeded the permissible scope of a pat-down search.

KEY QUOTATIONS

"We hold the automobile exception did not justify the warrantless search of Gefroh's person." (¶ 13, 801 N.W.2d at 434)

"The automobile exception to the warrant requirement did not justify the warrantless search of Gefroh's person." (¶ 14, 801 N.W.2d at 434)

FACTUAL BACKGROUND

The Ward County Narcotics Task Force had information that Gefroh had received and sold controlled substances. During a traffic stop prompted by registration-tab violations and an illegal turn, a drug-sniffing dog alerted at the passenger-side door of Gefroh's vehicle, establishing probable cause to search the vehicle. Officers searched the vehicle and found marijuana residue, then conducted a pat-down of Gefroh after observing furtive movements; the search of his pocket revealed bundles of cocaine.

PROCEDURAL HISTORY

After a traffic stop and searches of Gefroh's vehicle and person, Gefroh was charged with unlawful possession of cocaine with intent to deliver. The district court suppressed the cocaine found in his pocket, ruling that the automobile exception did not justify a warrantless search of Gefroh's person and that the officers exceeded the scope of a permissible weapons pat-down. The State appealed, challenging only the automobile-exception ruling and not the separate ruling concerning the scope of the pat-down search.

DISPOSITION

affirmed

CASES CITED

- State v. Beane, 2009 ND 146, 770 N.W.2d 283

- State v. Harlan, 2008 ND 220, 758 N.W.2d 706
- Terry v. Ohio, 392 U.S. 1 (1968)
- State v. Duchene, 2007 ND 31, 727 N.W.2d 769
- State v. Johnson, 2011 ND 48, 795 N.W.2d 367
- State v. Dudley, 2010 ND 39, 779 N.W.2d 369
- State v. Gregg, 2000 ND 154, 615 N.W.2d 515
- State v. Zwicke, 2009 ND 129, 767 N.W.2d 869
- State v. Ressler, 2005 ND 140, 701 N.W.2d 915
- United States v. Place, 462 U.S. 696 (1983)
- United States v. Lingenfelter, 997 F.2d 632 (9th Cir. 1993)
- Wyoming v. Houghton, 526 U.S. 295 (1999)
- United States v. Ross, 456 U.S. 798 (1982)
- United States v. Di Re, 332 U.S. 581 (1948)
- Ybarra v. Illinois, 444 U.S. 85 (1979)