

SUPREME COURT OF NORTH DAKOTA

Buchholz v. North Dakota Department of Transportation

Buchholz v. N.D. Dep't of Transp., 639 N.W.2d 490 (N.D. 2002) · No. No. 20010211 · Decided February 20, 2002

SUMMARY

The Supreme Court of North Dakota reviewed the reversal of an administrative suspension of Deanna Buchholz's driving privileges after an Intoxilyzer test recorded a blood alcohol concentration of .22 percent. The court held that the State Toxicologist's approved method did not require the test operator to inspect the subject's mouth or ask whether the subject had anything in it, so long as the operator continuously observed the subject for the required twenty-minute period. The court reversed the district court and reinstated the hearing officer's ninety-one-day suspension.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| COURT                 | Supreme Court of North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Mary Maring; Mary Muehlen Maring; William A. Neumann; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. Vande Walle, Chief Justice                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | February 20, 2002                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | No. 20010211                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | The North Dakota Department of Transportation appealed a district court judgment reversing an administrative hearing officer's ninety-one-day suspension of Buchholz's driving privileges.                                                                                                                                                                                                                                                                                                                                                                                        |
| STANDARD OF REVIEW    | Under the Administrative Agencies Practices Act, the Supreme Court reviews the agency decision rather than the district court's decision and affirms unless the decision is contrary to law, violates constitutional rights, fails to comply with the Act, denies a fair hearing, lacks support in a preponderance of the evidence, or is unsupported by the agency's findings. Agency findings are entitled to great deference, and the court asks only whether a reasoning mind reasonably could have concluded that the findings were supported by the weight of the evidence. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of North Dakota.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

## PARTIES

North Dakota Department of Transportation v. Deanna Lynn Buchholz

## TOPICS

judicial review of agency action

agency adjudication

administrative law

evidence

appellate procedure

## PRACTICE AREAS

administrative law

administrative license suspension

DUI evidence

appellate procedure

## QUESTIONS PRESENTED

1. Whether the State Toxicologist's approved Intoxilyzer testing method requires an operator to ask the subject whether she has anything in her mouth or to inspect her mouth before administering the test.
2. Whether the evidence established that the Intoxilyzer test was fairly administered and that its results were admissible in the administrative license-suspension hearing.
3. Whether the hearing officer's findings and suspension decision were supported by the evidence under the Administrative Agencies Practices Act.

## HOLDINGS

1. The State Toxicologist's approved method, which requires the operator to ascertain that the subject had nothing to eat, drink, or smoke within twenty minutes before the breath sample, does not require the operator to ask whether the subject has anything in her mouth or to inspect her mouth before administering the test.
2. The Intoxilyzer test was fairly administered under the approved method, and the test results were properly admitted in evidence.

## KEY QUOTATIONS

*"We conclude the State Toxicologist's approved method does not require test operators to ask subjects if they have anything in their mouths or to check their mouths prior to administering the test."* (at 495)

*"Thus, the Department established the Intoxilyzer test was fairly administered and the test results were properly received in evidence."* (at 495)

## FACTUAL BACKGROUND

On March 11, 2001, Highway Patrol Officer Trevor Wahlen arrested Deanna Buchholz for driving under the influence of alcohol. Buchholz consented to an Intoxilyzer test, which recorded a blood alcohol concentration of .22 percent. Although Wahlen allowed Buchholz to use an unsupervised restroom and did not recall checking her mouth or asking whether she had anything in it, he testified that he observed her for twenty minutes before the first breath sample was taken and that she did not eat, drink, or smoke during that period.

## PROCEDURAL HISTORY

After Buchholz was arrested for driving under the influence and submitted to an Intoxilyzer test showing a .22 percent blood alcohol concentration, she requested an administrative hearing. The hearing officer admitted the test results and suspended her driving privileges for ninety-one days. The district court reversed, concluding the test results were inadmissible because the officer had not ascertained that Buchholz had nothing in her mouth during the required twenty-minute period. The Department appealed to the North Dakota Supreme Court, which reviewed the agency record, reversed the district court, and reinstated the suspension.

#### DISPOSITION

reversed

#### REMAND INSTRUCTIONS

The court reinstated the hearing officer's ninety-one-day suspension of Buchholz's driving privileges; no further remand was ordered.

#### CASES CITED

- Houn v. N.D. Dep't of Transp., 2000 ND 131, 613 N.W.2d 29
- Ringsaker v. Dir., N.D. Dep't of Transp., 1999 ND 127, 596 N.W.2d 328
- N.D. Dep't of Transp. v. DuPaul, 487 N.W.2d 593, 595 (N.D. 1992)
- McPeak v. Moore, 545 N.W.2d 761, 764 (N.D. 1996)
- City of West Fargo v. Hawkins, 2000 ND 168, 616 N.W.2d 856
- State v. Kacalek, 34 Or. App. 967, 580 P.2d 205 (1978)
- State v. Snuggerud, 153 Or. App. 300, 956 P.2d 1015 (1998)
- State v. Balderson, 138 Or. App. 531, 910 P.2d 1138 (1996)
- Bickler v. N.D. State Highway Comm'r, 423 N.W.2d 146 (N.D. 1988)
- State v. Chihanski, 540 N.W.2d 621 (N.D. 1995)