

SUPREME COURT OF NORTH DAKOTA

City of Grand Forks v. Scialdone

Scialdone, 2005 ND 24 (N.D. 2005) · No. 20040119 · Decided January 19, 2005

SUMMARY

The Supreme Court of North Dakota affirmed Candace Scialdone’s criminal judgment for actual physical control of a motor vehicle while under the influence. The court held that proof an Intoxilyzer 5000 was checked after being moved was not a foundational requirement for admitting the test results. It also held that the admission of documents faxed during trial and related rebuttal testimony did not violate discovery rules, particularly because Scialdone did not request a continuance or show prejudice.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Mary Muehlen Maring; William A. Neumann; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	January 19, 2005
DOCKET	20040119
DISPOSITION	affirmed
PROCEDURAL POSTURE	Scialdone appealed a criminal judgment entered after a jury found her guilty of actual physical control of a motor vehicle while under the influence of intoxicating liquor or with an alcohol concentration of at least ten one-hundredths of one percent by weight.
STANDARD OF REVIEW	The admission of the challenged documents and testimony under N.D.R.Crim.P. 16 was reviewed for abuse of discretion. The court also applied the statutory and approved-method requirements governing admission of chemical-test results.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of North Dakota
PARTIES	Candace Rae Scialdone v. City of Grand Forks

TOPICS

- criminal procedure
- evidence
- appellate procedure
- suppression of evidence
- standard of review

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether proof that an Intoxilyzer 5000 machine was checked or recalibrated after being moved was a foundational requirement for admission of the Intoxilyzer test results.
2. Whether the trial court violated N.D.R.Crim.P. 16 or abused its discretion by admitting documents faxed during trial and permitting a field inspector to testify as rebuttal evidence.
3. Whether the City violated N.D.R.Crim.P. 16 by providing foundational documentation on the day before trial.

HOLDINGS

1. Evidence that an Intoxilyzer 5000 machine was checked after being moved was not a foundational requirement for showing that the test was administered according to the State Toxicologist's approved method or for admitting the test result.
2. The trial court did not abuse its discretion by admitting the faxed documents or permitting the field inspector to testify because the evidence was offered as rebuttal evidence, Scialdone did not request a continuance, and she did not show an inability to meet the evidence.
3. The City did not violate N.D.R.Crim.P. 16 in a manner requiring reversal because Scialdone did not request a continuance and did not show prejudice from the timing of the disclosure.

KEY QUOTATIONS

“We conclude that evidence of such checks is not a foundational requirement for showing an Intoxilyzer 5000 test was administered in accordance with the approved method for conducting the test or for admission of the test result into evidence.” (¶ 7)

“If Scialdone felt surprised, her remedy was to request a continuance.” (¶ 9)

“The judgment is affirmed.” (¶ 14)

FACTUAL BACKGROUND

After being arrested for actual physical control of a vehicle, Scialdone consented to an Intoxilyzer test. Before jury selection, the City provided defense counsel with Intoxilyzer records it intended to use at trial. During trial, defense counsel challenged the foundation for the test results based on a student-manual statement that calibration checks must be completed whenever an Intoxilyzer machine is moved from one location to another. During a recess, the City obtained and faxed documents showing that the machine had been installed and checked by a field inspector in Grand Forks after being moved from Bismarck, and the inspector testified as rebuttal evidence.

PROCEDURAL HISTORY

The City prosecuted Scialdone in municipal court, and a jury returned a guilty verdict. During trial, the court admitted Intoxilyzer test results, documents faxed during a recess, and rebuttal testimony from a field inspector over Scialdone's objections. The criminal judgment was entered, and Scialdone appealed; the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lee v. North Dakota Department of Transportation, 2004 ND 7, ¶ 10, 673 N.W.2d 245
- Ringsaker v. Director, North Dakota Department of Transportation, 1999 ND 127, ¶ 7, 596 N.W.2d 328
- Johnson v. North Dakota Department of Transportation, 2004 ND 59, ¶ 12, 676 N.W.2d 807
- City of Bismarck v. Bosch, 2005 ND 12, ¶ 11
- Kiecker v. North Dakota Department of Transportation, 2005 ND 23, ¶ 13
- United States v. Gleason, 616 F.2d 2, 25 (2d Cir. 1979)
- State v. Erickson, 517 N.W.2d 646, 648-49 (N.D. 1994)
- State v. Hirschhorn, 2002 ND 36, ¶ 9, 640 N.W.2d 439
- United States v. Gonzalez-Rincon, 36 F.3d 859, 865 (9th Cir. 1994)
- United States v. Delia, 944 F.2d 1010, 1017-18 (2d Cir. 1991)
- City of Grand Forks v. Ramstad, 2003 ND 41, 658 N.W.2d 731