

SUPREME COURT OF NORTH DAKOTA

State v. Bornhoeft

2009 ND 138 (N.D. 2009) · No. 20090067 · Decided July 21, 2009

SUMMARY

The Supreme Court of North Dakota affirmed the denial of Faron Bornhoeft's motion to dismiss a disorderly conduct charge entered through a conditional guilty plea. The court held that although vulgar speech directed at police may be constitutionally protected, the supporting affidavit described additional conduct—including yelling in a residential area at night and approaching and pointing at the deputy—that could support a disorderly conduct charge.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom; Carol Ronning Kapsner; Mary Muehlen Maring; Daniel J. Crothers; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	July 21, 2009
DOCKET	20090067
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bornhoeft entered a conditional guilty plea under North Dakota Rule of Criminal Procedure 11(a)(2), reserving his right to appeal the denial of his motion to dismiss a disorderly conduct charge. He appealed the district court's order denying dismissal.
STANDARD OF REVIEW	Whether activity is constitutionally protected is a question of law reviewed fully on appeal. The sufficiency of the complaint on a motion to dismiss is reviewed under the rule that the motion tests the sufficiency of the charging instrument, including a supporting affidavit filed with the complaint.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Faron Bornhoeft v. State of North Dakota

TOPICS

- criminal procedure
- first amendment
- free speech
- appellate procedure

PRACTICE AREAS

criminal law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred in denying Bornhoeft's motion to dismiss the disorderly conduct charge because his vulgar language was protected speech under the First Amendment.
2. Whether a supporting affidavit filed with a criminal complaint may be considered in determining the sufficiency of the complaint on a motion to dismiss.

HOLDINGS

1. A supporting affidavit filed with a criminal complaint may be read together with the complaint to determine whether the charging instrument sufficiently alleges facts constituting an offense.
2. Although a person may not be charged with disorderly conduct solely because of the content of protected speech, conduct accompanying vulgar speech may support a disorderly conduct charge when it constitutes threatening behavior, unreasonable noise, or creates a hazardous, physically offensive, or seriously alarming condition serving no legitimate purpose.

KEY QUOTATIONS

“That protection must, however, be distinguished from potentially disturbing or threatening conduct, even if the yelling contains vulgar language intended for a police officer.” (¶ 11)

“While Bornhoeft could not have been charged for disorderly conduct solely on the basis of the content of his “speech,” the affidavit filed with the complaint described conduct that can be the basis of disorderly conduct charges” (¶ 13)

FACTUAL BACKGROUND

A deputy encountered Bornhoeft yelling vulgarities in Underwood at approximately 1:15 a.m. and observed him walking with poor balance. After following Bornhoeft's wife's pickup to the Bornhoeft residence, the deputy saw Bornhoeft yell obscenities, approach him, point an arm at him while standing approximately five feet away, and continue yelling after being asked to calm down. The deputy arrested Bornhoeft for disorderly conduct.

PROCEDURAL HISTORY

The district court denied Bornhoeft's motion to dismiss, concluding the facts presented were sufficient to support a disorderly conduct charge. Bornhoeft entered a conditional guilty plea in January 2009, and judgment was entered in February 2009. The North Dakota Supreme Court denied the State's motion to remand for withdrawal of the conditional plea and trial, then affirmed the district court's order.

DISPOSITION

affirmed

CASES CITED

- City of Bismarck v. Schoppert, 469 N.W.2d 808 (N.D. 1991)
- State v. Holbach, 2009 ND 37, ¶ 11, 763 N.W.2d 761
- State v. Howe, 247 N.W.2d 647, 652 (N.D. 1976)
- State v. Jelliff, 251 N.W.2d 1, 5-6 (N.D. 1977)
- State v. Stevens, 19 N.D. 249, 123 N.W. 888 (1909)
- City of Houston v. Hill, 482 U.S. 451, 461 (1987)
- State v. Barth, 2005 ND 134, ¶ 13, 702 N.W.2d 1

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/north-dakota-supreme-court-of-north-dakota/2009/state-v-bornhoeft-fg9y7x6j>