

NORTH DAKOTA SUPREME COURT

State v. Schmidt

817 N.W.2d 332 (N.D. 2012) · Decided June 7, 2012

SUMMARY

Steven Schmidt appealed his theft-of-property conviction, arguing that the State violated due process by failing to preserve surveillance video and that the district court improperly admitted testimony about a still photograph and denied an adverse-inference jury instruction. The North Dakota Supreme Court held that the State had failed to collect the video in the first instance, the private store owner was not a State agent, and the video-related testimony was not hearsay or a confrontation-clause violation. The court affirmed the judgment.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | North Dakota Supreme Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Sandstrom; Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner                                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | June 7, 2012                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Schmidt appealed from a criminal judgment entered after a jury convicted him of theft of property, challenging the denial of his motion to suppress evidence, his pretrial motion concerning testimony about a surveillance photograph and video, and his proposed adverse-inference jury instruction.                                                                                                                                                                                     |
| STANDARD OF REVIEW    | For suppression rulings, the Court defers to the district court's factual findings, resolves conflicts in testimony in favor of affirmance, and affirms if sufficient competent evidence supports the findings and the decision is not contrary to the manifest weight of the evidence; constitutional due process questions are reviewed de novo. Denial of a motion in limine is reviewed for abuse of discretion. Jury instructions are fully reviewable and are considered as a whole. |
| PRECEDENTIAL VALUE    | Published North Dakota Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                |
| PARTIES               | Steven Schmidt v. State                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## TOPICS

criminal procedure

suppression of evidence

due process

hearsay

jury instructions

## PRACTICE AREAS

criminal procedure

evidence

constitutional law

appellate procedure

jury instructions

## QUESTIONS PRESENTED

1. Whether the State violated Schmidt's due process rights under *Brady v. Maryland* by failing to collect and preserve the Dakota Express surveillance video.
2. Whether the district court abused its discretion by denying Schmidt's motion to limit testimony about the still photograph and exclude testimony concerning the surveillance video, including whether the testimony was hearsay or violated the Confrontation Clause.
3. Whether the district court erred by refusing Schmidt's proposed jury instruction permitting an adverse inference against the State based on the loss or destruction of evidence.

## HOLDINGS

1. The State did not violate Schmidt's due process rights because the police never collected the surveillance video from the private store owner; *Brady* applies to suppression of evidence collected and preserved by the State, and the State generally has no duty to collect evidence for the defense.
2. The district court did not abuse its discretion in denying Schmidt's pretrial motion because the store owner's testimony described his personal observations of the video, was not an out-of-court statement offered for its truth, and Schmidt had the opportunity to confront and cross-examine him at trial.
3. The district court properly refused the proposed adverse-inference instruction because the State never possessed or destroyed the video, and the instruction would have misleadingly implied that the State or its agent caused the evidence to be lost.

## KEY QUOTATIONS

*“unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.”* (337)

*“The State cannot preserve video evidence it never had in its possession.”* (337)

*“Jury instructions must correctly and adequately inform the jury of the applicable law and must not mislead or confuse the jury.”* (340)

## FACTUAL BACKGROUND

Heidi Blum reported unauthorized ATM withdrawals after her bank mailed a replacement ATM card and its personal identification number to an address where Schmidt and his girlfriend lived, although Blum had moved away. A Mandan police officer investigated surveillance at Dakota Express and obtained a still photograph showing Schmidt leaving the store near the time of one withdrawal, but never obtained the underlying video

before the surveillance system recorded over it. The video had not been collected by police and was not in the State's possession.

## PROCEDURAL HISTORY

After investigating unauthorized ATM withdrawals, police arrested and charged Schmidt with theft of property. Before trial, Schmidt moved to suppress a still photograph and related testimony based on the State's alleged failure to preserve the underlying surveillance video, moved to limit testimony about the photograph and exclude testimony about the video, and requested an adverse-inference jury instruction. The district court denied the motions and instruction, a jury found Schmidt guilty, and the North Dakota Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Smith, 2005 ND 21, 691 N.W.2d 203
- City of Fargo v. Thompson, 520 N.W.2d 578 (N.D. 1994)
- State v. Burr, 1999 ND 143, 598 N.W.2d 147
- Rümmer v. State, 2006 ND 216, 722 N.W.2d 528
- Syvertson v. State, 2005 ND 128, 699 N.W.2d 855
- Strickler v. Greene, 527 U.S. 263 (1999)
- United States v. Bagley, 473 U.S. 667 (1985)
- State v. Steffes, 500 N.W.2d 608 (N.D. 1993)
- Arizona v. Youngblood, 488 U.S. 51 (1988)
- State v. Ressler, 2005 ND 140, 701 N.W.2d 915
- State v. Seglen, 2005 ND 124, 700 N.W.2d 702
- Williston Farm Equip., Inc. v. Steiger Tractor, Inc., 504 N.W.2d 545 (N.D. 1993)
- Nesvig v. Nesvig, 2006 ND 66, 712 N.W.2d 299
- Pointer v. Texas, 380 U.S. 400 (1965)
- Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009)
- Crawford v. Washington, 541 U.S. 36 (2004)

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