

SUPREME COURT OF NORTH DAKOTA

City of Bismarck v. Daniel J. McCormick

2012 ND 53 · No. 20110239 · Decided March 15, 2012

SUMMARY

The North Dakota Supreme Court held that a district court order granting a post-trial judgment of acquittal based on the court's legal conclusion about judicial notice of a municipal ordinance was appealable as an order quashing an information. The Court further held that the defendant's post-verdict motion was timely under North Dakota Rule of Criminal Procedure 29(c) and that the district court could freely take judicial notice of the city ordinance as a legislative fact. The order was reversed and the matter remanded.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Carol Ronning Kapsner; Mary Muehlen Maring; Daniel J. Crothers; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	March 15, 2012
DOCKET	20110239
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City of Bismarck appealed from a district court order granting McCormick's post-trial motion for a judgment of acquittal after a jury found him guilty of violating a Bismarck driving-under-the-influence ordinance.
STANDARD OF REVIEW	Whether the City's appeal was authorized by statute was reviewed under the statutory right-to-appeal framework. Timeliness of a motion was reviewed for abuse of discretion. Statutory interpretation was fully reviewable as a question of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of North Dakota; precedential.
PARTIES	City of Bismarck v. Daniel J. McCormick

TOPICS

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QUESTIONS PRESENTED

1. Whether the district court's post-trial order granting judgment of acquittal was an appealable order quashing an information or a nonappealable judgment of acquittal.
2. Whether McCormick's post-trial motion for judgment of acquittal was timely under the North Dakota Rules of Criminal Procedure.
3. Whether a district court may take judicial notice of a city ordinance when a municipal-court matter is transferred to district court for a jury trial under N.D.C.C. § 40-18-15.1.
4. Whether the prior statements in *Keyes v. Amundson* concerning judicial notice of municipal ordinances were controlling precedent.

HOLDINGS

1. The order granting judgment of acquittal was properly treated as an order quashing an information, rather than as a judgment of acquittal, because it rested on a legal conclusion and did not resolve factual elements of the charged offense. The City therefore had a statutory right to appeal.
2. McCormick's motion for judgment of acquittal was timely because it was filed three days after the guilty verdict, within the fourteen-day period allowed by N.D.R.Crim.P. 29(c). The district court did not abuse its discretion in finding the motion timely.
3. A district court may freely take judicial notice of a city ordinance when a municipal-court matter is transferred to district court for a jury trial. N.D.C.C. § 40-18-15.1 does not prohibit judicial notice merely because it lacks the express judicial-notice language contained in N.D.C.C. § 40-18-19.
4. *Keyes v. Amundson* did not control the issue because its statement that a municipal ordinance must be introduced into evidence or stipulated to was dictum, not necessary to the decision in that case.

KEY QUOTATIONS

“Rather, to determine what constitutes an acquittal, as distinguished from a dismissal quashing the information, we look at the substance of the judge’s ruling to determine whether it actually represents a resolution of some or all of the factual elements of the offense charged.” (¶ 5)

“Therefore, the district court was able to “freely” take judicial notice of the ordinance.” (¶ 12)

“Because the statements are dicta, they are not controlling.” (¶ 14)

FACTUAL BACKGROUND

McCormick was charged with driving under the influence in violation of a Bismarck city ordinance and requested a jury trial. The case was transferred from municipal court to district court, where a jury found him

guilty. McCormick then moved for judgment of acquittal because the City had not introduced the ordinance into evidence, and the district court granted the motion.

PROCEDURAL HISTORY

McCormick was charged in municipal court and requested a jury trial, resulting in transfer of the matter to district court under N.D.C.C. § 40-18-15.1. After the jury returned a guilty verdict, McCormick moved for judgment of acquittal because the City had not introduced the ordinance into evidence. The district court granted the motion, concluding it could not judicially notice the ordinance absent a statutory requirement, stipulation, or admission into evidence. The Supreme Court of North Dakota reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court order granting judgment of acquittal was reversed, and the matter was remanded for further proceedings consistent with the opinion.

CASES CITED

- City of Dickinson v. Kraft, 472 N.W.2d 441, 442 (N.D. 1991)
- State v. Deutscher, 2009 ND 98, ¶ 6, 766 N.W.2d 442
- State v. Erickson, 2011 ND 49, ¶ 7, 795 N.W.2d 375
- Brakke v. Brakke, 525 N.W.2d 687, 689 (N.D. 1994)
- Nelson v. Johnson, 2010 ND 23, ¶ 12, 778 N.W.2d 773
- State v. Velasquez, 1999 ND 217, ¶ 4, 602 N.W.2d 693
- Aggie Investments GP v. Pub. Serv. Comm'n, 470 N.W.2d 805, 811 (N.D. 1991)
- Keyes v. Amundson, 391 N.W.2d 602, 604, 607-08 (N.D. 1986)
- Bakke v. St. Thomas Pub. Sch. Dist. No. 43, 359 N.W.2d 117, 120 (N.D. 1984)
- First Fed. Sav. & Loan Ass'n v. Scherle, 356 N.W.2d 894, 897 (N.D. 1984)

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