

SUPREME COURT OF THE STATE OF NEW MEXICO

State v. Chakerian

State v. Chakerian · No. S-1-SC-35121 · Decided February 22, 2018

SUMMARY

The New Mexico Supreme Court held that NMSA 1978, Section 66-8-109(B), requires law enforcement to advise a DWI arrestee of the right to arrange an independent chemical test and provide the means to contact a qualified person. The statute does not require officers to meaningfully assist in arranging or obtaining the test, although they may not hinder or interfere with the arrestee’s efforts. The Court reversed the Court of Appeals and affirmed the defendant’s DWI and speeding convictions.

CASE DETAILS

COURT	Supreme Court of the State of New Mexico
WRITING FOR THE COURT	Petra Jimenez Maes, Justice; Judith K. Nakamura, Chief Justice; Edward L. Chávez, Justice; Charles W. Daniels, Justice; Barbara J. Vigil, Justice
JURISDICTION	New Mexico
DECIDED	February 22, 2018
DOCKET	S-1-SC-35121
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State petitioned for certiorari review of a divided New Mexico Court of Appeals decision reversing Defendant's DWI conviction based on an alleged denial of his statutory right to arrange an independent chemical test.
STANDARD OF REVIEW	Statutory interpretation is a question of law reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of New Mexico v. Stefan Chakerian

TOPICS

- statutory interpretation
- criminal procedure
- suppression of evidence
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether NMSA 1978, Section 66-8-109(B), requires law enforcement to do more than advise a DWI arrestee of the right to arrange an independent chemical test and provide the means to contact a qualified tester.
2. Whether the officer denied Chakerian a reasonable opportunity to arrange an independent chemical test by providing access to a telephone and telephone directory without further assistance.
3. Whether the State could be sanctioned for failing to provide a meaningful opportunity to obtain an independent chemical test.

HOLDINGS

1. Section 66-8-109(B) requires law enforcement to advise a DWI arrestee of the right to arrange for a qualified person of the arrestee's choosing to perform an additional chemical test and to provide the means to arrange that test, but it does not require law enforcement to meaningfully cooperate in or facilitate the actual procurement of the test.
2. Chakerian was afforded a reasonable opportunity to arrange an independent chemical test because the officer provided access to a telephone, telephone directory, and pen, did not obstruct calls, and allowed approximately fifteen minutes for Chakerian to seek the test.
3. The Court did not decide what sanction would apply to a denial of the statutory right because it concluded that Chakerian's right was not denied.

KEY QUOTATIONS

“This section does not, however, confer any additional obligation on law enforcement to facilitate the arrestee in actually arranging for the test.” (¶ 2)

“At a minimum, the arrestee must be provided with the means to contact a person of the arrestee’s choosing in order to arrange for a chemical test.” (¶ 22)

“Police may not unnecessarily hinder or interfere with an arrestee’s attempt to exercise the right to an additional test.” (¶ 24)

FACTUAL BACKGROUND

An Albuquerque police officer arrested Stefan Chakerian for DWI after stopping him for speeding and detecting alcohol. After an initial Intoxilyzer malfunction, the officer obtained two breath samples showing concentrations of .12 and .11. At the metropolitan detention center, Chakerian requested an additional chemical test, and the officer provided a telephone, telephone directory, and pen for approximately fifteen to twenty minutes. Chakerian did not make a call and ultimately said he was finished using the materials.

PROCEDURAL HISTORY

After Defendant was arrested for DWI and received a breath test, he requested an additional chemical test. The metropolitan court denied his motion to suppress the breath card and convicted him of DWI and speeding. The district court affirmed, concluding that Defendant had not shown prejudice. The Court of Appeals reversed and remanded for determination of sanctions, holding that law enforcement had to meaningfully cooperate with Defendant's efforts to arrange an independent test. The New Mexico Supreme Court granted certiorari, reversed the Court of Appeals, affirmed the convictions, and remanded to the metropolitan court for further proceedings consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court remanded to the metropolitan court for further proceedings in accordance with the opinion after reversing the Court of Appeals and affirming the metropolitan court convictions.

CASES CITED

- State v. Chakerian, 2015-NMCA-052, ¶¶ 4, 18-20, 22-23, 32-33, 44, 348 P.3d 1027
- State v. Gardner, 1998-NMCA-160, ¶ 13, 126 N.M. 125, 967 P.2d 465
- State v. Johnson, 2001-NMSC-001, ¶¶ 5-6, 130 N.M. 6, 15 P.3d 1233
- State v. Almanzar, 2014-NMSC-001, ¶ 14, 316 P.3d 183
- State v. Hubble, 2009-NMSC-014, ¶ 10, 146 N.M. 70, 206 P.3d 579
- Fugere v. State Taxation & Revenue Dep't, Motor Vehicle Div., 1995-NMCA-040, ¶ 25, 120 N.M. 29, 897 P.2d 216
- State v. Jones, 1998-NMCA-076, ¶¶ 22, 24-25, 125 N.M. 556, 964 P.2d 117
- Schulz v. Comm'r of Pub. Safety, 760 N.W.2d 331, 334 (Minn. Ct. App. 2009)
- State v. Jasa, 901 N.W.2d 315, 326 (Neb. 2017)
- Schroeder v. State, Department of Motor Vehicles and Public Safety, 772 P.2d 1278, 1281 (Nev. 1989) (per curiam)
- State v. Tompkins, 795 N.W.2d 351, 355 (N.D. 2011)
- State v. Hedges, 154 P.3d 1074, 1078 (Idaho Ct. App. 2007)
- State v. Sidmore, 951 P.2d 558, 570 (Mont. 1997)
- State v. McNichols, 906 P.2d 329, 333 (Wash. 1995) (en banc)
- Unruh v. State, 669 So. 2d 242, 243-44 (Fla. 1996)
- Commonwealth v. Long, 118 S.W.3d 178, 183 (Ky. Ct. App. 2003)