

SUPREME COURT OF NORTH DAKOTA

Dustin Alan LeClair v. Thomas Sorel, Director, Department of Transportation

2018 ND 255 (2018) · No. 20180155 · Decided December 6, 2018

SUMMARY

The North Dakota Supreme Court reversed a district court judgment that had reinstated Dustin Alan LeClair’s driving privileges. The court held that an implied consent advisory omitting the word “punishable” nevertheless substantively complied with N.D.C.C. § 39-20-01(3)(a), making the Intoxilyzer results admissible and permitting suspension of LeClair’s driving privileges.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte; Lisa Fair McEvers; Jon J. Jensen; Daniel J. Crothers; Gerald W. VandeWalle
JURISDICTION	North Dakota
DECIDED	December 6, 2018
DOCKET	20180155
DISPOSITION	reversed
PROCEDURAL POSTURE	The North Dakota Department of Transportation appealed the Cass County District Court's reversal of an administrative decision suspending LeClair's driving privileges.
STANDARD OF REVIEW	Under the Administrative Practices Act, the court reviews whether the agency's decision is in accordance with law, supported by the evidence and findings, and otherwise complies with statutory and constitutional requirements. The court gives great deference to the agency's factual determinations, reviews hearing-officer evidentiary rulings for abuse of discretion, and fully reviews questions of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Thomas Sorel, Director, Department of Transportation v. Dustin Alan LeClair

TOPICS

judicial review of agency action

administrative law

evidence

statutory interpretation

appellate procedure

PRACTICE AREAS

administrative law

driving under the influence

implied consent

administrative license suspension

evidence

QUESTIONS PRESENTED

1. Whether the officer's omission of the word "punishable" from the implied consent advisory rendered the advisory substantively incomplete under N.D.C.C. § 39-20-01(3)(a).
2. Whether the Intoxilyzer test results were admissible under N.D.C.C. § 39-20-01(3)(b) despite the omission.
3. Whether the district court erred in reversing the Department of Transportation's decision to suspend LeClair's driving privileges.

HOLDINGS

1. An implied consent advisory need not be read word-for-word; the advisory is sufficient when it conveys all substantive information required by N.D.C.C. § 39-20-01(3)(a) in a manner reasonably calculated to be comprehensible to the driver. Omitting the word "punishable" did not change the advisory's substantive meaning because a crime is, by definition, punishable.
2. The Intoxilyzer test results were admissible because the officer's advisory was substantively complete and complied with N.D.C.C. § 39-20-01(3)(b).
3. The district court erred in reversing the Department's suspension decision.

KEY QUOTATIONS

"Omission of the word "punishable" is not fatal to the advisory so long as the word "crime" is communicated to the driver." (§ 13)

"Despite the omitted word, the officer conveyed the entire substance of the advisory." (§ 14)

FACTUAL BACKGROUND

A West Fargo police officer stopped LeClair after observing a vehicle with extremely bright lights and noted that LeClair had bloodshot eyes, slurred speech, and smelled strongly of alcohol. Field sobriety tests and an onsite screening test indicated impairment and a blood alcohol level above the legal limit. After arresting LeClair for driving under the influence, the officer read an implied consent advisory before administering an Intoxilyzer test, but omitted the word "punishable" from the statutory phrase stating that refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence.

PROCEDURAL HISTORY

After LeClair was arrested for driving under the influence, a hearing officer admitted the Intoxilyzer results and suspended his driving privileges for two years. The district court reversed the Department's decision and

reinstated LeClair's privileges. The Department appealed, and the North Dakota Supreme Court reversed the district court and reinstated the Department's suspension decision.

DISPOSITION

reversed

CASES CITED

- Filkowski v. Director, North Dakota Department of Transportation, 2015 ND 104, ¶ 6, 862 N.W.2d 785
- State v. O'Connor, 2016 ND 72, 877 N.W.2d 312
- State v. Ayala, 2017 ND 126, 894 N.W.2d 865
- State v. Bohe, 2018 ND 216, 917 N.W.2d 497
- Schoon v. North Dakota Department of Transportation, 2018 ND 210, 917 N.W.2d 199
- State v. Salter, 2008 ND 230, 758 N.W.2d 702
- State v. Smith, 2014 ND 152, 849 N.W.2d 599
- Korb v. North Dakota Department of Transportation, 2018 ND 226, ¶ 12, 918 N.W.2d 49
- Estate of Christeson v. Gilstad, 2013 ND 50, ¶ 14, 829 N.W.2d 453