

SUPREME COURT OF NORTH DAKOTA

State v. Scutchings

759 N.W.2d 729 (N.D. 2009) · No. No. 20080125 · Decided August 25, 2009

SUMMARY

The Supreme Court of North Dakota considered whether the prosecutor improperly commented during closing argument on the defendant's failure to testify. The court held that the comment violated the defendant's constitutional right against self-incrimination and was not harmless beyond a reasonable doubt. The court reversed the criminal judgment and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Vande Walle, Chief Justice; Gerald W. Vande Walle, Chief Justice; Carol Ronning Kapsner, Justice; Mary Muehlen Maring, Justice; Daniel J. Crothers, Justice; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	August 25, 2009
DOCKET	No. 20080125
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Scutchings appealed from a criminal judgment entered after a jury found him guilty of class C felony corruption or solicitation of a minor.
STANDARD OF REVIEW	The court reviewed the constitutional claim de novo and applied harmless-error review, requiring the State to establish beyond a reasonable doubt that the error did not contribute to the verdict.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Cornell Xavier Scutchings v. State of North Dakota

TOPICS

- criminal procedure
- fifth amendment
- prosecutorial misconduct
- harmless error
- appellate procedure

PRACTICE AREAS

- criminal procedure
- constitutional criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the prosecutor's closing-argument statement that there was nothing to refute the victim's testimony was an improper direct or indirect comment on Scutchings's failure to testify in violation of the Fifth and Fourteenth Amendments.
2. Whether the improper comment was harmless beyond a reasonable doubt.
3. Whether the court needed to address the admission of Scutchings's booking photograph and alleged prosecutorial vouching for the victim's credibility.

HOLDINGS

1. A prosecutor's statement that there was nothing to refute the victim's testimony was an impermissible comment on Scutchings's failure to testify because Scutchings was the only person who could have rebutted or contradicted the victim's account.
2. The improper comment was not harmless beyond a reasonable doubt, requiring reversal of the criminal judgment and a new trial.

KEY QUOTATIONS

"The Griffin rule applies to indirect as well as direct comments on a defendant's failure to take the witness stand." (759 N.W.2d at 731)

"Scutchings is the only person who could have rebutted or contradicted C.M.'s testimony." (759 N.W.2d at 732)

"This argument turned 'the silence of the accused into evidence against him,' and indirectly suggested to the jury that Scutchings would have testified if he were not guilty." (759 N.W.2d at 733)

FACTUAL BACKGROUND

Scutchings was charged with soliciting his twelve-year-old niece, C.M., with intent to engage in a sexual act during incidents at a residence in Grand Forks. C.M. testified that Scutchings made inappropriate comments and advances when they were alone; no other State witness observed the charged conduct. Scutchings did not testify and presented no defense evidence. During closing argument, the prosecutor stated that there was nothing to refute C.M.'s testimony and referred to Scutchings's lack of a constitutional burden to testify.

PROCEDURAL HISTORY

Scutchings was charged under N.D.C.C. § 12.1-20-05 and tried before a jury. After the State's closing argument commented on the absence of evidence refuting the victim's testimony, the district court denied Scutchings's motion for a mistrial. The jury returned a guilty verdict, and the district court imposed a five-year sentence with three years suspended. The North Dakota Supreme Court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The criminal judgment is reversed, and the case is remanded for a new trial.

CASES CITED

- Carter v. Kentucky, 450 U.S. 288, 305 (1981)
- State v. Myers, 2006 ND 242, ¶ 7, 724 N.W.2d 168
- Griffin v. California, 380 U.S. 609, 614 (1965)
- State v. His Chase, 531 N.W.2d 271, 273 (N.D. 1995)
- State v. Flohr, 310 N.W.2d 735, 736 (N.D. 1981)
- State v. Marmon, 154 N.W.2d 55, 59 (N.D. 1967)
- State v. Ebach, 1999 ND 5, ¶ 15, 589 N.W.2d 566
- Hovey v. Ayers, 458 F.3d 892, 912 (9th Cir. 2006)
- United States v. Gardner, 396 F.3d 987, 989 (8th Cir. 2005)
- United States v. Moore, 917 F.2d 215, 224 (6th Cir. 1990)
- State v. Nordquist, 309 N.W.2d 109, 119 (N.D. 1981)
- United States v. Whitehead, 618 F.2d 523, 527 (4th Cir. 1980)
- State v. Skjonsby, 319 N.W.2d 764, 787 (N.D. 1982)
- Pollard v. State, 552 S.W.2d 475, 477 (Tex. Crim. App. 1977)
- State v. Blackman, 201 Ariz. 527, 38 P.3d 1192, 1210 (Ct. App. 2002)
- United States v. Snook, 366 F.3d 439, 444 (7th Cir. 2004)
- United States v. Mietus, 237 F.3d 866, 871 (7th Cir. 2001)
- Runnels v. Hess, 653 F.2d 1359, 1363 (10th Cir. 1981)
- People v. Harrison, 35 Cal. 4th 208, 25 Cal. Rptr. 3d 224, 106 P.3d 895, 927 (2005)
- State v. Keyes, 2000 ND 83, ¶¶ 10-11, 609 N.W.2d 428
- State v. Janda, 397 N.W.2d 59, 66 (N.D. 1986)
- State v. Schneider, 270 N.W.2d 787, 792 (N.D. 1978)
- Chapman v. California, 386 U.S. 18, 22 (1967)
- State v. Rivet, 2008 ND 145, ¶¶ 10, 15, 752 N.W.2d 611
- United States v. Hasting, 461 U.S. 499, 510-11 (1983)
- Jaste v. Gailfus, 2004 ND 94, ¶ 18, 679 N.W.2d 257