

SUPREME COURT OF NORTH DAKOTA

James Kelly Leno v. Director, North Dakota Department of Transportation

2015 ND 255 (N.D. 2015) · No. 20150091 · Decided October 19, 2015

SUMMARY

The North Dakota Supreme Court affirmed a judgment upholding the Department of Transportation’s 91-day suspension of James Kelly Leno’s driving privileges. The Court held that the arresting officer’s testimony sufficiently established compliance with the specimen submitter’s checklist for the blood sample. The Court also concluded that the hearing officer properly allowed the officer to refresh his memory using a blank checklist and that Leno received a fair and impartial hearing.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair Kapsner, Justice; Lisa Fair Kapsner; McEvers; Daniel J. Crothers; Thomas E. Merrick, District Judge; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	October 19, 2015
DOCKET	20150091
DISPOSITION	affirmed
PROCEDURAL POSTURE	Leno appealed the district court's judgment affirming the North Dakota Department of Transportation's administrative decision suspending his driving privileges for 91 days.
STANDARD OF REVIEW	Administrative revocation of a driver's license is reviewed under N.D.C.C. § 28-32-46. The Court reviews legal questions de novo and affirms unless the agency order is not in accordance with law, violates constitutional rights, fails to comply with statutory procedures, denies a fair hearing, lacks support in a preponderance of the evidence, or contains conclusions and an order unsupported by the findings. The Court reviews the district court's judgment in the same manner. Admission of materials used to refresh a witness's memory is reviewed for abuse of discretion. Courts have wide discretion regarding leading questions on direct examination.

PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	James Kelly Leno v. Director, North Dakota Department of Transportation

TOPICS

judicial review of agency action administrative law evidence standard of review appellate procedure

PRACTICE AREAS

administrative law evidence appellate procedure

QUESTIONS PRESENTED

1. Whether the arresting officer's testimony was sufficient to establish scrupulous compliance with the specimen submitter's checklist requirements when the completed checklist was not presented at the administrative hearing.
2. Whether the hearing officer abused her discretion or denied Leno a fair hearing by allowing the officer to review a blank copy of the checklist to refresh his memory.
3. Whether the hearing officer denied Leno a fair and impartial hearing by using leading questions to elicit testimony about compliance with the checklist.

HOLDINGS

1. When the specimen submitter's checklist is not submitted to the Department or introduced at the administrative hearing, testimony from participants may establish scrupulous compliance with the approved blood-sample collection and submission procedures. Here, the arresting officer's testimony was sufficient to support the finding that he complied with every required checklist step.
2. A hearing officer does not abuse her discretion by allowing a witness to review an admitted blank copy of a specimen-submitters checklist to refresh memory when the witness demonstrates a need for refreshing and confirms that the material assists recollection, so long as the witness does not testify directly from the material and the opposing party may cross-examine the witness.
3. The hearing officer did not deny Leno a fair and impartial hearing by asking leading questions because most questions were not leading and the leading questions used were necessary to refresh the officer's memory. The hearing officer acted within her discretion.

KEY QUOTATIONS

"Although the officer did not use the exact terminology set forth on the bottom of Form 104, we conclude the testimony was sufficient for the hearing officer to reasonably find that the arresting officer scrupulously complied with the requirements in the specimen submitter's checklist." (¶ 10)

"We conclude the hearing officer did not abuse her discretion in allowing the officer to refresh his memory." (¶ 13)

“However, upon our review of the entire record, we conclude Leno has failed to establish that he was denied a fair and impartial hearing.” (¶ 16)

FACTUAL BACKGROUND

On July 31, 2014, James Kelly Leno was arrested for driving under the influence after failing field sobriety tests and an onsite alcohol screening test. A blood test showed a blood alcohol concentration of 0.145 percent. At the administrative hearing, the arresting officer did not bring the completed bottom portion of the specimen submitter's checklist, but testified about the blood-collection and submission procedures after reviewing a blank copy of the form. The hearing officer found that the officer complied with the required procedures and that Leno's test was conducted lawfully.

PROCEDURAL HISTORY

After Leno was arrested for driving under the influence and requested an administrative hearing, the Department hearing officer admitted evidence concerning the blood-sample collection and found that the required procedures had been followed. The Department suspended Leno's driving privileges for 91 days. The Burleigh County District Court affirmed, and the North Dakota Supreme Court affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Kroschel v. Levi, 2015 ND 185, ¶ 6, 866 N.W.2d 109
- Vanlishout v. N.D. Dep't of Transp., 2011 ND 138, ¶ 12, 799 N.W.2d 397
- Johnson v. Dep't of Transp., 2004 ND 148, ¶ 5, 683 N.W.2d 886
- Deeth v. Dir., N.D. Dep't of Transp., 2014 ND 232, ¶¶ 10-11, 857 N.W.2d 86
- Obrigewitch v. Dir., N.D. Dep't of Transp., 2002 ND 177, ¶ 7, 653 N.W.2d 73
- Filkowski v. Dir., N.D. Dep't of Transp., 2015 ND 104, ¶¶ 16-18, 862 N.W.2d 785
- State v. Keller, 2013 ND 122, ¶¶ 18-20, 833 N.W.2d 486
- Schlosser v. North Dakota Department of Transportation, 2009 ND 173, ¶¶ 11-13, 775 N.W.2d 695
- State v. Jordheim, 508 N.W.2d 878, 880, 883 (N.D. 1993)
- McNamara v. Dir., N.D. Dep't of Transp., 500 N.W.2d 585, 590 (N.D. 1993)
- State v. Sivesind, 439 N.W.2d 530, 533 (N.D. 1989)
- Community Homes of Bismarck, Inc. v. Main, 2011 ND 27, ¶ 11, 794 N.W.2d 204
- Dawson v. N.D. Dep't of Transp., 2013 ND 62, ¶ 12, 830 N.W.2d 221
- Interest of T.A., 472 N.W.2d 226, 227 (N.D. 1991)
- Powers v. Martinson, 313 N.W.2d 720, 729-30 (N.D. 1981)
- Dittus v. N.D. Dep't of Transp., 502 N.W.2d 100, 103 (N.D. 1993)
- Pladson v. Hjelle, 368 N.W.2d 508, 511 (N.D. 1985)

- S & S Landscaping Co. v. N.D. Workers' Comp. Bur., 541 N.W.2d 80, 82 (N.D. 1995)

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