

SUPREME COURT OF NORTH DAKOTA

City of Jamestown v. Schultz

2020 ND 154 (2020) · No. 20190359 · Decided July 22, 2020

SUMMARY

The North Dakota Supreme Court affirmed the denial of Carlin Schultz’s motion to suppress chemical-test results following his conditional guilty plea to driving under the influence. The court held that Schultz received a reasonable opportunity to consult with an attorney before deciding to submit to chemical testing and was not entitled to a second consultation after the testing procedure changed. Separate opinions addressed the statutory basis and continuing validity of the limited right to consult counsel before chemical testing.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jon J. Jensen, Chief Justice; Daniel J. Crothers, Justice; Lisa Fair McEvers, Justice; Gerald W. VandeWalle, Justice; Jerod E. Tufte, Justice
JURISDICTION	North Dakota
DECIDED	July 22, 2020
DOCKET	20190359
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a criminal judgment following a conditional guilty plea to driving under the influence. The conditional plea preserved Schultz's challenge to the denial of his motion to suppress chemical-test results.
STANDARD OF REVIEW	Whether an arrestee was given a reasonable opportunity to speak with an attorney is a mixed question of law and fact reviewed de novo. The reasonableness determination is based objectively on the totality of the circumstances.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Carlin Dean Schultz v. City of Jamestown

TOPICS

criminal procedure

suppression of evidence

evidence

statutory interpretation

PRACTICE AREAS

criminal procedure

DUI

evidence

statutory interpretation

QUESTIONS PRESENTED

1. Whether Schultz was denied his statutory right to a reasonable opportunity to consult with counsel before submitting to chemical testing.
2. Whether an arrestee who has already consulted with an attorney and decided to take a chemical test is entitled to a second opportunity to consult with counsel when administration of the test is subsequently transferred to another officer or machine.
3. Whether the chemical-test results should be suppressed as the remedy for an infringement of the limited statutory right to counsel.

HOLDINGS

1. Schultz received a reasonable opportunity to consult with an attorney before deciding to take the chemical test, so his limited statutory right to counsel was satisfied.
2. An individual who has been given a reasonable opportunity to consult with an attorney before deciding to take a chemical test is not entitled to a second opportunity to consult with an attorney after making that decision.
3. Suppression of the chemical-test results was not warranted because Schultz's statutory right to consult with counsel was not infringed or denied.

KEY QUOTATIONS

“Schultz was not required to be provided with a second chance to consult with an attorney subsequent to making a decision to take the chemical test.” (¶ 10)

“An arrested person who asks to speak with an attorney before taking a chemical test must be given a reasonable opportunity to do so if it does not materially interfere with the test administration.” (¶ 7)

FACTUAL BACKGROUND

Schultz was arrested for driving under the influence and read the implied-consent advisory. He requested to speak with an attorney, was permitted to do so for approximately one minute, and then agreed to take the chemical test. After the first officer could not administer the test because his Intoxilyzer 8000 credentials were invalid, Schultz asked about contacting his attorney again, but another officer ultimately administered the test without a second consultation.

PROCEDURAL HISTORY

Schultz was arrested for driving under the influence and submitted to a chemical breath test after consulting with an attorney once. When the officer encountered an equipment-credential problem, another officer administered

the test without allowing Schultz a second consultation. The district court denied Schultz's motion to suppress, after which he entered a conditional guilty plea. The Supreme Court of North Dakota affirmed.

DISPOSITION

affirmed

CASES CITED

- Kuntz v. State Highway Comm'r, 405 N.W.2d 285 (N.D. 1987)
- City of Mandan v. Jewett, 517 N.W.2d 640 (N.D. 1994)
- State v. Sadek, 552 N.W.2d 71 (N.D. 1996)
- State v. Ruden, 2017 ND 185, ¶ 14, 900 N.W.2d 58
- City of Dickinson v. Schank, 2017 ND 81, ¶ 7, 892 N.W.2d 593
- State v. Lee, 2012 ND 97, ¶ 11, 816 N.W.2d 782
- In re R.P., 2008 ND 39, ¶ 11, 745 N.W.2d 642
- City of Gwinner v. Vincent, 2017 ND 82, ¶ 10, 892 N.W.2d 598
- Lies v. Dir., N.D. DOT, 2008 ND 30, ¶ 9, 744 N.W.2d 783
- Jesser v. N.D. Dep't of Transp., 2019 ND 287, 936 N.W.2d 102
- D.G.L. Trading Corp. v. Reis, 2007 ND 88, ¶ 7, 732 N.W.2d 393
- Neutman v. N.D. Dep't, 2019 ND 288, 935 N.W.2d 788
- City of Bismarck v. King, 2019 ND 74, 924 N.W.2d 137
- State v. Von Ruden, 2017 ND 185, 900 N.W.2d 58
- Koehly v. Levi, 2016 ND 202, 886 N.W.2d 689
- Cudmore v. N.D. Dep't of Transp., 2016 ND 64, 877 N.W.2d 52
- State v. Keller, 2016 ND 63, 876 N.W.2d 724
- Washburn v. Levi, 2015 ND 299, 872 N.W.2d 605
- Schlittenhart v. N.D. Dep't of Transp., 2015 ND 179, 865 N.W.2d 825
- Herrman v. N.D. Dep't of Transp., 2014 ND 129, 847 N.W.2d 768
- Gardner v. N.D. Dep't of Transp., 2012 ND 223, 822 N.W.2d 55
- Bell v. N.D. Dep't of Transp., 2012 ND 102, 816 N.W.2d 786
- Kasowski v. N.D. Dep't of Transp., 2011 ND 92, 797 N.W.2d 40
- Interest of R.P., 2008 ND 39, 745 N.W.2d 642
- State v. Pace, 2006 ND 98, 713 N.W.2d 535
- Eriksmoen v. N.D. Dep't of Transp., 2005 ND 206, 706 N.W.2d 610
- Olson v. Job Serv. N.D., 2013 ND 24, ¶ 50, 827 N.W.2d 36
- Lamb v. State Bd. of Law Examiners, 2010 ND 11, ¶ 10, 777 N.W.2d 343
- City of Bismarck v. Uhden, 513 N.W.2d 373, 376 (N.D. 1994)

