

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

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| State of North Dakota, |) | |
| |) | |
| Plaintiff and Appellee, |) | Supreme Court No.: 20200176 |
| |) | District Court No.: 36-2019-CR-00777 |
| v. |) | |
| |) | |
| Dustin Allan Sackenreuter, |) | APPELLEE BRIEF |
| |) | |
| Defendant and Appellant. |) | |
| |) | |

APPEAL FROM THE CRIMINAL JUDGMENT ENTERED JULY 2, 2020, THE ORDER DENYING APPELLANT’S MOTION TO DISMISS, AND THE ORDER DENYING APPELLANT’S SPECIAL JURY INSTRUCTIONS, IN THE DISTRICT COURT, COUNTY OF RAMSEY, NORTHEAST JUDICIAL DISTRICT, NORTH DAKOTA THE HONORABLE DONOVAN FOUGHTY, PRESIDING.

BRIEF OF THE APPELLEE

Dated the 17th day of September 2020.

/s/ Kari M. Agotness _____
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N.D. R.Crim.P. §12.1-01-03(1) ¶ 14

STATEMENT OF THE ISSUES

- [¶1] 1. Did the District Court err in determining N.D.C.C. § 39-08-01 (1)(f) is not void for vagueness?
2. Did the District Court err in determining, at the time of his arrest, Mr. Sackenreuter was advised of the consequences of refusing a chemical test?
3. Did the District Court err in determining Mr. Sackenreuter's request for special jury instructions should be denied?

STATEMENT OF THE CASE

- [¶2] Appellee adopts Appellant's Statement of the Case.

STATEMENT OF THE FACTS

- [¶3] Appellee adopts Appellant's Statement of the Facts.

STANDARD OF REVIEW

- [¶4] Appellee concurs with Appellant's Standard of Review.

LAW AND ARGUMENT

[¶5] For an individual to be charged with the crime of Refusal to submit to a chemical test under N.D.C.C. § 39-08-01 (1)(e) an officer must comply with N.D.C.C. § 39-08-01 (1)(f) which reads:

“Subdivision e does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.

¶6 “The due process clauses of the State and Federal Constitutions require...criminal statutes...give[] adequate warning of the conduct proscribed and mark[] boundaries sufficiently distinct for judges and juries to fairly administer the law.” State v. Tweed, 491 N.W.2d 412, 419 (N.D. 1992) (quoting State v. Johnson, 417 N.W.2d 365, 368 (N.D. 1987)). Vague laws may trap the innocent because they fail to provide adequate warning of what conduct is prohibited, and they may result in arbitrary and discriminatory application because a vague law delegates basic policy matters to those who apply the law, allowing the law to be applied on an ad hoc and subjective basis. State v. Tibor, 373 N.W.2d 877, 880 (N.D. 1985).

¶7 All laws must meet two requirements to survive a void-for-vagueness challenge: (1) the law must create minimum guidelines for the reasonable police officer, judge, or jury charged with enforcement of the statute; and (2) the law must provide a reasonable person with adequate and fair warning of the proscribed conduct. State v. Brown, 2009 ND 150, ¶ 33, 771 N.W.2d 267, 277. The Court reviews the statute to determine if the two dictates are clear under a reasonable person standard. City of Belfield v. Kilkenny, 2007 ND 44, ¶10, 729 N.W.2d 120, 124. The United States Supreme Court has noted “that the more important aspect of vagueness doctrine ‘is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.’” Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 1858, 75 L.Ed. 2d 903, 909 (1983) (quoting Smith v. Goguen, 415 U.S. 566, at 574, 94 S. Ct. 1242 at 1247-48, 39 L. Ed. 2d at 613).

¶8 “All legislative enactments are imbued with a strong presumption of constitutionality, and the presumption is conclusive unless it is clearly shown that the

statute contravenes the state or federal constitution. State v. Tweed, 491 N.W.2d 412, 418 (N.D. 1992). Any doubt must be resolved in favor of the constitutionality of the statute. Id.

[¶9] Interpretation of a statute is a question of law. In re R.A., 2011 ND 119, ¶ 24, 799 N.W.2d 332 (citing In re M.W., 2009 ND 55 ¶ 6, 764 N.W.2d 185. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. If the language of a statute is clear and unambiguous, the letter of the statute need not be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05.

[¶10] Mr. Sackenreuter (hereafter “Sackenreuter”) was arrested on November 10, 2019 for the crime of Dui/Refusal in violation of N.D.C.C. § 39-08-01(1)(e) which reads:

“A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if:

(e) That individual refuses to submit to any of the following:

(2) A chemical test, or tests, of the individual’s blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual’s blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.

[¶11] Sackenreuter was transported to the Lake Region Correctional Center where the officer advised Sackenreuter of his Miranda warning, the ND implied consent advisory reading in conformance with N.D.C.C. 39-20-01(3) and asked Sackenreuter to consent to an Intoxilyzer breath test, he said “no.” The officer advised Sackenreuter “I should also inform you that refusal to take the chemical test I am requesting is a crime under ND law.” Sackenreuter declined to take the test. (Appellant’s Appx. at 17) The State submits Sackenreuter, as a reasonable person had adequate warning of the proscribed conduct.

[¶12] Sackenreuter appears to take issue with what is meant by “consequences” in N.D.C.C. § 39-08-01(f). Consequences is normally understood to be the result of an action/non-action. The “consequence” of refusing the chemical test is at it simplest, what would happen if you refused. Sackenreuter was advised of the criminal consequence, i.e., it is a crime under ND law to refuse to take the test. Had the legislature wanted specific consequences (i.e., punishment and grade of offense) relayed to a person, the legislature would have enacted the 2019 provision differently.

[¶13] Sackenreuter references Smith v. Dept. of Motor Vehicles, 248 Neb. 360 in support of N.D.C.C. 39-08-01(1)(f) being ambiguous. However, in Smith, the statutory requirements were different. Here, Sackenreuter was able to make an informed decision, take the test, if you choose to refuse, it is a crime. Sackenreuter, as a reasonable person was in a position to make a rational decision as to whether or not he wanted to comply with the law.

[¶14] The jury instructions adopted by the court contained the essential elements of the crime DUI-Refusal. The court properly found Sackenreuter’s requested instructions to be inappropriate. N.D.C.C. § 12.1-01-03 (1) describes the elements of an offense and provides:

“No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt....”Element of an offense” means:

- a. The forbidden conduct;
- b. The attendant circumstances specified in in the definition and grading of the offense;
- c. The required culpability;
- d. Any required result; and
- e. The nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue.

[¶15] Section 39-08-01(1) (e) of the N.D.C.C. says a person may not drive upon a highway of this state and refuse to submit to a chemical test of the individual’s breath....’upon the request of a law enforcement officer under section 39-20-01. The requirement in section 39-08-01 (1) (f) is more appropriate as a legal issue for determination before trial and not an essential element of the crime of refusing a chemical test under 39-08-01 (1) (e). See generally State v. Webster, 2017 ND 75, 891 N.W. 2d 769.

CONCLUSION

[¶16] The Appellee respectfully requests this Court affirm the district courts orders and judgment.

[¶17] Respectively submitted on September 17, 2020.

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CERTIFICATE OF COMPLIANCE

[¶18] The undersigned, hereby certifies, in compliance with Rule 32(2) of the North Dakota Rules of Appellate Procedure, that the above brief

was prepared with proportional type face and the total number of pages in the above brief totals 9.

Dated this 17th day of September, 2020

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| Dustin Allan Sackenreuter, |) | CERTIFICATE OF SERVICE |
| |) | BY ELECTRONIC MEANS |
| Defendant and Appellant. |) | |
| |) | |

[¶1] I, Kari Agotness, a duly licensed attorney in the State of North Dakota, hereby certify that on the 17th day of September, 2020, I provided true and correct copies of the following:

- Appellee’s Brief

[¶2] by electronic means through the court’s electronic filing system, upon Christopher Thompson, Attorney for Appellant, at chris@stflawfirm.com.
The Supreme Court of North Dakota at supclerkofcourt@ndcourts.gov.

[¶3] Respectfully submitted this 17th day of September, 2020.

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