

INTERIM JUDICIARY COMMITTEE
August 25, 2016

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Bichfield v. North Dakota & Beylund v. Levi

579 U.S. ___, 136 S. Ct. 2160 (2016)

These cases addressed the issue of the constitutionality of criminalizing a refusal to submit to chemical testing under the State's implied consent and test refusal laws. N.D.C.C. § 39-20-01 and N.D.C.C. § 39-08-01(1)(e) respectively. The Court granted review and consolidated the matters of two defendants – Danny Birchfield, and Steve Beylund, with another defendant from Minnesota challenging similar laws in that state.

The United States Supreme Court held that the Fourth Amendment permits a warrantless breath test as a search incident to arrest for drunk driving, but not a warrantless blood test. To reach this decision the Court weighed the competing interests of the motorist's individual privacy rights against the degree to which the chemical test evidence is needed for the promotion of legitimate governmental interests.

The Court found that Breath tests do not implicate significant privacy concerns because the physical intrusion involved is almost negligible; the test simply yields a Blood Alcohol Concentration (BAC) reading; and participation in the breath test is not likely to enhance the embarrassment inherent in the arrest.

On the other hand, blood tests require the piercing of the skin, which is significantly more intrusive than blowing into a tube; the test gives law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading, and that prospect could cause anxiety for the person tested.

The Court also determined that motorists may not be criminally punished for refusing to submit to a blood test based on legal implied consent laws. The Court determined that it is one thing to approve implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply, but quite another for the State to insist upon an intrusive blood test and then to

impose criminal penalties on refusal to submit. The Court found there must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.

The Court applied its legal conclusions to the cases before it. Defendant Birchfield was criminally prosecuted for refusing a warrantless blood draw under N.D.C.C. § 39-08-01(1)(e). Because the Court found the blood draw Birchfield refused could not be justified as a search incident to his arrest, and no other basis for a warrantless test of his blood applied, the Court held that he was threatened with an unlawful search and unlawfully convicted for refusing that search.

Defendant Beylund, on the other hand, unlike Birchfield was not prosecuted for refusing a test. Instead he submitted to the blood test after police told him the law required his submission and his license was suspended in an administrative proceeding. Because the North Dakota Supreme Court held Beylund's consent was voluntary on the erroneous assumption the State could permissibly compel both blood and breath tests, the Court remanded the case to the State Court to reevaluate Beylund's consent, under the totality of the circumstances, given the partial inaccuracy of the officer's advisory.

The North Dakota Supreme Court has not yet acted on remand in Beylund, but has recently asked the parties for their recommendations on how to proceed. The United States Supreme Court decision did not directly address chemical urine tests or onsite screening tests under N.D.C.C. § 39-20-14.

It is clear from the Birchfield decision that North Dakota's implied consent and test refusal laws are constitutional if law enforcement requests a motorist submit to a chemical breath test as a search incident to the motorist's arrest for drunk driving. It is also clear that North Dakota cannot criminally prosecute a motorist for refusing a chemical blood test request unless the law enforcement officer first obtains a search warrant for the blood test or if another exception to the warrant requirement applies. At this time, the primary impact of this decision is how law enforcement are operating in the field in regards to the chemical tests they are requesting.