

CASE NAME: Kansas vs Ryce (Supreme Court of Kansas; No. 111,698 February 26, 2016)

FACTS AND PROCEDURAL HISTORY:

On December 9, 2012, a Sedgwick County sheriff's deputy observed a man, later identified as David Lee Ryce, driving a car down a street in reverse. The deputy momentarily lost sight of Ryce but then saw Ryce pull out of a nearby parking lot and drive on the left side of the street. The deputy executed a traffic stop and, upon making contact with Ryce, noticed a strong odor of alcohol and Ryce's bloodshot and watery eyes. Ryce admitted to the deputy he had enjoyed "a few drinks," and the deputy noted Ryce's slow, lethargic, and slurred speech. Ryce told the deputy he did not have his driver's license.

The deputy administered field sobriety tests. Ryce complied but demonstrated impairment throughout the tests. The deputy also learned Ryce's car registration did not match its tag and that Ryce's driver's license was suspended. The deputy arrested Ryce and transported him to the county jail.

At the jail, the deputy gave Ryce the written and oral notice required under Kansas' implied consent law, specifically the notice defined in K.S.A. 2014 Supp. 8- 1001(k), and asked Ryce to submit to a breath test to determine the presence of alcohol. The notice informed Ryce, among other things, that a refusal to submit to testing could result in administrative proceedings to suspend Ryce's driver's license and could also result in criminal charges. Despite these warnings, Ryce refused to submit to a breath test, and no testing occurred.

The State charged Ryce, who had four prior DUI convictions, with the nonperson felony of refusing to submit to testing for the presence of alcohol or drugs, in violation of 8-1025(a). In addition, the State charged Ryce with three misdemeanors: driving while suspended, driving without a tag, and improper backing.

Ryce moved to dismiss the test refusal charge on the grounds that 8-1025 unconstitutionally punished the exercise of his right to withdraw consent to a warrantless search—a right he argues arises under the Fourth Amendment and § 15 of the Kansas Constitution Bill of Rights. He also cited the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The district court ruled, after a hearing, that while a defendant had no right to refuse to submit to a chemical test for alcohol, it was nonetheless unconstitutional to criminalize this refusal. The district court accordingly dismissed the 8-1025 charge and granted the State's motion to dismiss the remaining counts without prejudice.

The State appealed the district court's ruling, filing its appeal with this court under K.S.A. 2014 Supp. 22-3601(b)(1) and K.S.A. 2014 Supp. 22-3602(b)(1) (permitting an appeal directly to this court from the district court for cases in which a Kansas statute has been held unconstitutional). We conducted oral argument in Ryce's appeal on the same day we heard three other appeals relating to the constitutionality of 8-1025: *State v. Wilson*, No. 112,009, *State v. Nece*, 111,401, and *State v. Wycoff*, No. 110,393, all of which are being decided this day. A

ISSUE:

When a Kansas driver exercises their right to withdraw consent for chemical tests in DUI cases, can the state of Kansas criminally punish the driver for this choice under the applicable criminal refusal statute?

HOLDING:

We hold the general rule allowing an express withdrawal of consent applies to DUI testing under 8-1001: Once a suspect withdraws consent, whether it be express consent or implied under 8-1001(a), a search based on that consent cannot proceed. But this is only a preliminary question in this appeal. The ultimate question is whether, when a driver exercises the constitutional right to withdraw consent, Kansas may criminally punish the individual for this choice under the criminal refusal statute, K.S.A. 2014 Supp. 8-1025. We conclude it cannot. Applying the Due Process Clause of the Fourteenth Amendment to the United States Constitution, we recognize Kansas has compelling interests in combating drunk driving and prosecuting DUI offenders. Nevertheless, by criminally punishing a driver's withdrawal of consent, 8-1025 infringes on fundamental rights arising under the Fourth Amendment. K.S.A. 2014 Supp. 8-1025, therefore, must withstand strict scrutiny by being narrowly tailored to serve the State's interests. We hold that K.S.A. 2014 Supp. 8-1025 does not meet this test and is facially unconstitutional and affirm the district court's decision to dismiss the count against Ryce that criminalizes his refusal to submit to the test.