

**SUMMARY STATEMENT**  
*State of Idaho v. Bojangles Armin Schaubert*  
Docket No. 51463

Bojangles Armin Schaubert appeals from the district court's judgment of conviction for possession of a controlled substance. Schaubert argues the terms of his probation agreement placed him in a classic penalty situation because the probation condition that required Schaubert to "cooperate" with his probation officers prohibited Schaubert from refusing his probation officers' requests to tell and show the officers where Schaubert was hiding controlled substances. Schaubert also asserts the probation term prevented him from invoking the right to silence, and implied that such a refusal would jeopardize his conditional liberty.

"A classic penalty situation" occurs where the very assertion of the privilege is penalized so as to "foreclose a free choice to remain silent." *Minnesota v. Murphy*, 465 U.S. 420, 437 (1984). To constitute a penalty situation, the individual must be faced with the government's assertion, either expressly or impliedly, that invocation of the Fifth Amendment will lead to a substantial penalty. *See, e.g., Lefkowitz v. Cunningham*, 431 U.S. 801, 806 (1977).

The Idaho Court of Appeals held that neither the express nor the implied terms of Schaubert's probation created a classic penalty situation. First, the Court held Schaubert's probation agreement contains no express sanction for failing to tell or show the officers where the controlled substances were located. Schaubert concedes there was no express statement made by the probation officers that if Schaubert refused to incriminate himself he would be in violation of the terms of his probation or that the failure to do so would result in a probation violation proceeding. The Court noted the term of Schaubert's probation required his cooperation, and that "[c]ooperation includes being truthful." However, the Court then concluded that cooperation, without more, "does not give rise to a self-executing privilege" in contravention of the Fifth Amendment. *Murphy*, 465 U.S. at 435.

Next, the Court concluded there were no implied terms that created a classic penalty situation because Schaubert's belief that his probation would be revoked if he asserted his Fifth Amendment right was not reasonable. First, the probation officers had not filed a probation violation in the past when Schaubert admitted to violating the terms of his probation. Second, in this case, the probation officer did not make any statements that implied that if Schaubert did not follow the conditions of probation, probation would be revoked.

Consequently, there was no penalty situation created by the terms of Schaubert's probation and his statement to his probation officer waived any privilege he could assert. The district court's order denying Schaubert's motion to suppress and Schaubert's judgment of conviction were affirmed.

\*\*\*This summary constitutes no part of the opinion of the Court but has been prepared by court staff for the convenience of the public.\*\*\*