

SUPREME COURT OF OKLAHOMA

Estes v. ConocoPhillips Co.

2008 OK 21 (Okla. 2008) · No. No. 104,031 · Decided March 4, 2008

SUMMARY

The Oklahoma Supreme Court answered two certified questions concerning the Oklahoma Standards for Workplace Drug and Alcohol Testing Act. It held that evidential breath tests used to determine an employee's blood alcohol level are laboratory services requiring confirmation by a licensed testing facility before an employer may rely on the results for discipline. The court further held that a willful violation includes conscious and purposeful violations or deliberate disregard of the Act by persons who knew or should have known its requirements.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Kauger, J.; Edmondson, V.C.J.; Hargrave, J.; Opala, J.; Watt, J.; Taylor, J.; Colbert, J.; Reif, J.; Winchester, C.J.
JURISDICTION	Oklahoma
DECIDED	March 4, 2008
DOCKET	No. 104,031
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Northern District of Oklahoma certified two first-impression questions of Oklahoma law to the Supreme Court of Oklahoma in a wrongful-termination action.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Oklahoma answering certified questions of state law.
PARTIES	Dennis E. Estes v. ConocoPhillips Company

TOPICS

[wrongful termination](#)[employment law](#)[statutory interpretation](#)[administrative law](#)[remedies](#)

PRACTICE AREAS

[employment law](#)[administrative law](#)[statutory interpretation](#)[remedies](#)

QUESTIONS PRESENTED

1. Under the 2005 version of the Oklahoma Standards for Workplace Drug and Alcohol Testing Act, are evidential breath tests used to determine an employee's blood-alcohol content laboratory services that must be confirmed by a licensed testing facility before an employer may take disciplinary action?
2. What standard governs whether an employer committed a willful violation of the Testing Act under 40 O.S. 2001 § 563(A)?

HOLDINGS

1. Under the version of the Oklahoma Standards for Workplace Drug and Alcohol Testing Act in effect on May 24, 2005, evidential breath tests used to determine an employee's blood-alcohol level are laboratory services and must be confirmed by a licensed testing facility before an employer may take disciplinary action in reliance on the results.
2. A willful violation of the Testing Act means a conscious, purposeful violation of the Act or a deliberate disregard of the Act by a person who knows or should have known of its requirements.

KEY QUOTATIONS

“Therefore, we find that under the version of the Testing Act in effect on May 24, 2005, evidential breath tests to determine an employee's blood alcohol level are laboratory services which must be confirmed by a licensed testing facility before an employer may take disciplinary action in reliance on those test results.” (¶ 13)

“Therefore, we find that the term willful violation as found in 40 O.S.2001 § 563(A) contemplates not only conscious, purposeful violations of the Testing Act, but also deliberate disregard of the law by those who know, or should have known, of the requirements of the Testing Act.” (¶ 22)

“The crux of the matter is that evidential breath tests are laboratory services which must be confirmed by a licensed testing facility before an employer may take disciplinary action against an employee.” (¶ 25)

FACTUAL BACKGROUND

Dennis Estes, a mechanical engineer employed by ConocoPhillips for more than thirty years, was tested for alcohol at work after drinking beer and wine at a family cookout the prior evening. Two evidential breath tests administered at ConocoPhillips's unlicensed clinic produced blood-alcohol readings of 0.076 and 0.064 gm/dl, although there was no allegation that Estes appeared intoxicated or had ever been intoxicated at work.

ConocoPhillips terminated Estes within an hour based solely on the test results and told him there was no appeal procedure.

PROCEDURAL HISTORY

Estes filed suit in federal district court after ConocoPhillips terminated his employment based solely on evidential breath-test results. ConocoPhillips moved to dismiss for failure to state a claim. The federal court certified questions concerning whether evidential breath tests constituted laboratory services requiring licensure and the meaning of a willful violation under the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.

DISPOSITION

other

CASES CITED

- McClure v. ConocoPhillips Co., 2006 OK 42, 142 P.3d 390
- Walker v. Group Health Serv., Inc., 2001 OK 2, 37 P.3d 749
- Oklahoma Alcoholic Beverage Control Bd. v. Burris, 1980 OK 58, 626 P.2d 1316
- Schulte Oil Co., Inc. v. Oklahoma Tax Comm'n, 1994 OK 103, 882 P.2d 65
- Branch Trucking Co. v. State ex rel. Okla. Tax Comm'n, 1990 OK 41, 801 P.2d 686
- Application of Southwestern Bell, 2007 OK 55, 164 P.3d 150
- Bell v. Phillips Petroleum Co., 1982 OK 28, 641 P.2d 1115
- Udall v. Tallman, 380 U.S. 1, 16-17 (1965)
- Commonwealth Edison Co. v. U.S. Department of Energy, 877 F.2d 1042, 1045-46 (D.C. Cir. 1989)
- National Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 127 S. Ct. 2518, 168 L. Ed. 2d 467 (2007)
- Wick v. Gunn, 1917 OK 607, 169 P. 1087
- Oklahoma Alcoholic Beverage Control Bd. v. Milam, 1964 OK 54, 393 P.2d 823
- Rogers v. Excise Bd. of Greer County, 1984 OK 95, 701 P.2d 754
- In re Order Declaring Annexation, 1981 OK CIV APP 57, 637 P.2d 1270
- Wise-Buchanan Coal Co. v. Ray, 1932 OK 424, 17 P.2d 360
- Childers v. Independent Sch. Dist. No. 1 of Bryan County, 1981 OK 123, 645 P.2d 992
- Shields v. State, 1939 OK 203, 89 P.2d 756
- King v. King, 2005 OK 4, 107 P.3d 570
- TRW/Reda Pump v. Brewington, 1992 OK 31, 829 P.2d 15
- Dean v. Multiple Injury Trust Fund, 2006 OK 78, 145 P.3d 1097
- Head v. McCracken, 2004 OK 84, 102 P.3d 670
- Saul v. Alcorn, 2007 OK 90, 176 P.3d 346
- Simpson v. Oklahoma Alcoholic Beverage Control Bd., 1965 OK 206, 409 P.2d 364
- State ex rel. Thompson v. Ekberg, 1980 OK 91, 613 P.2d 466
- Cox v. State ex rel. Oklahoma Department of Human Services, 2004 OK 17, 87 P.3d 607
- Bullard's Oil Field Serv. Inc. v. Williford Energy Co., 1989 OK 63, 775 P.2d 802
- Nottingham v. City of Yukon, 1988 OK 130, 766 P.2d 973
- Halstead v. McHendry, 1977 OK 131, 566 P.2d 134
- American Perforating Co. v. Oklahoma State Bank, 1970 OK 4, 463 P.2d 958
- Fourth Nat. Bank of Tulsa v. Board of Comm'rs of Craig County, 1939 OK 320, 95 P.2d 878
- Town of Red Fork v. Gantt-Baker Co., 1928 OK 149, 266 P. 444

- Colbert v. First Nat. Bank of Ardmore, 1913 OK 445, 133 P. 206
- Bryant v. Commissioner of Department of Public Safety, 1996 OK 134, 937 P.2d 496
- Chan v. City of Chicago, 916 F. Supp. 804, 806 (N.D. Ill. 1996)
- Holien v. Sears Roebuck & Co., 298 Or. 76, 689 P.2d 1292, 1303 (1984)

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