

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Hanson v. Miller

211 W. Va. 677 (2002) · Decided July 3, 2002

SUMMARY

The Supreme Court of Appeals of West Virginia held that breathalyzer results obtained using a one-sample testing protocol were admissible despite the appellants’ challenge to their scientific reliability. The court affirmed the circuit court’s ruling, concluding that the appellants had not shown the protocol to be improper under applicable health department rules or inherently unreliable under West Virginia Rule of Evidence 702.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam
JURISDICTION	West Virginia
DECIDED	July 3, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	The appellants challenged the admission of breathalyzer results obtained under a one-sample testing protocol. Hanson raised the issue in a driver's-license revocation proceeding, while Massey raised it in a criminal DUI proceeding. The circuit court consolidated the matters, upheld admission of the breathalyzer evidence, and the appellants appealed.
STANDARD OF REVIEW	Evidentiary rulings are generally reviewed for abuse of discretion; when the claimed evidentiary error turns on interpretation of the West Virginia Rules of Evidence, review is de novo.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion
PARTIES	Luther Hanson, Emery Massey v. Miller

TOPICS

- expert testimony
- evidence
- criminal procedure
- administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether breathalyzer results produced under a one-sample testing protocol are inadmissible because the protocol fails to comply with applicable Department of Health requirements.
2. Whether breathalyzer results produced under a one-sample protocol are inherently unreliable and therefore inadmissible under Rule 702 of the West Virginia Rules of Evidence.

HOLDINGS

1. Breathalyzer results are admissible despite the use of a one-sample protocol when the appellants do not establish that the protocol constitutes improper administration under the Department of Health's prescribed rules or is scientifically unreliable under Rule 702.

KEY QUOTATIONS

“Based on the foregoing, we conclude that the circuit court did not err in holding that the results of the breathalyzer test were admissible, despite the use of a one-sample protocol.” (at 680)

FACTUAL BACKGROUND

Luther Hanson challenged the use of one-sample breathalyzer results in a driver's-license revocation proceeding, and Emery Massey raised a similar challenge in a criminal DUI proceeding. The circuit court consolidated the matters and heard expert testimony from both the appellants and the State concerning the reliability of the one-sample protocol. The appellants' expert testified that one-sample testing had a greater theoretical potential for unreliability than two-sample testing, but did not show that two-sample testing actually produced materially different results or that one-sample testing was scientifically unreliable.

PROCEDURAL HISTORY

The Circuit Court of Raleigh County ruled, after an evidentiary hearing involving expert testimony, that breathalyzer results generated under a one-sample protocol satisfied the applicable scientific-reliability threshold and were admissible. The Supreme Court of Appeals of West Virginia affirmed that ruling and remanded for further proceedings consistent with its opinion.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the circuit court for further proceedings consistent with the opinion.

CASES CITED

- State v. Peyatt, 173 W. Va. 317, 315 S.E.2d 574 (1983)

- Gentry v. Mangum, 195 W. Va. 512, 466 S.E.2d 171 (1995)
- State v. Dyer, 160 W. Va. 166, 233 S.E.2d 309 (1977)
- State v. Hood, 155 W. Va. 337, 184 S.E.2d 334 (1971)
- Wilt v. Buracker, 191 W. Va. 39, 443 S.E.2d 196 (1993)
- State v. Dille, 258 N.W.2d 565 (Minn. 1977)
- Caretto v. Arizona Department of Transportation, 192 Ariz. 297, 965 P.2d 31 (1998)
- Commonwealth v. Durning, 406 Mass. 485, 548 N.E.2d 1242 (1990)
- State v. Barker, 179 W. Va. 194, 366 S.E.2d 642 (1988)

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