

SUPREME COURT OF VERMONT

State v. Green

173 Vt. 540 (2001) · Decided December 21, 2001

SUMMARY

The Vermont Supreme Court affirmed a judgment in favor of the defendant in a civil license-suspension proceeding. It held that when a motorist submits to an evidentiary test, the State must prove by a preponderance of the evidence that the motorist was operating, attempting to operate, or in actual physical control of a vehicle, rather than proving only that the officer had reasonable grounds to believe the motorist was operating it. The court distinguished cases involving a refusal to submit to testing.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	December 21, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the district court's judgment in favor of the defendant in a civil license-suspension proceeding arising from a DWI investigation.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	State of Vermont v. Green

TOPICS

- statutory interpretation
- administrative law
- appellate procedure

PRACTICE AREAS

- Administrative law
- DWI and implied consent
- Appellate procedure
- Statutory interpretation

QUESTIONS PRESENTED

1. In a civil license-suspension proceeding where the motorist submitted to an evidentiary test, must the State prove by a preponderance of the evidence that the motorist was operating, attempting to operate, or in actual physical control of the vehicle?

2. Does the statutory reasonable-grounds standard applicable to test-refusal cases also apply when the motorist submitted to the test?

HOLDINGS

1. When a motorist submits to an evidentiary test and the test indicates an alcohol concentration above the legal limit, the State must prove by a preponderance of the evidence that the motorist was operating, attempting to operate, or in actual physical control of the vehicle at the relevant time; proof only that the officer had reasonable grounds to request the test is insufficient.

KEY QUOTATIONS

“This does not mean, however, that, in the event the motorist does submit to a test, the State need not demonstrate that the motorist was operating a vehicle at the time alleged.” (542)

“Because the basis of the suspension is not the refusal, the State cannot prevail merely by showing that there was a reasonable basis for the officer to ask the person to take the test.” (542)

FACTUAL BACKGROUND

A police officer observed a vehicle traveling at a high rate of speed and followed it to a residence, where he saw the defendant walking around the vehicle but did not see who had been driving. The defendant denied operating the vehicle, was arrested for DWI, and agreed to a breath test that showed an alcohol concentration of .139. Because the State could not prove that the defendant had operated the vehicle, the criminal charge was dismissed and the district court denied the requested civil license suspension.

PROCEDURAL HISTORY

After the defendant was arrested for DWI and submitted to a breath test showing an alcohol concentration of .139, he submitted affidavits denying that he had operated the vehicle. The criminal charge was dismissed because the State could not prove that he was the operator. At the final civil suspension hearing, the district court again found that the State had not proved operation by a preponderance of the evidence and denied the suspension. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- Shaw v. Vermont District Court, 152 Vt. 1, 4, 563 A.2d 636, 638 (1989)
- State v. District Court, 129 Vt. 212, 214, 274 A.2d 685, 686 (1971)
- LaFaso v. Patrissi, 161 Vt. 46, 51, 633 A.2d 695, 698 (1993)