

SUPREME COURT OF VERMONT

State v. Burnett

195 Vt. 277 (2013) · Decided November 27, 2013

SUMMARY

The Vermont Supreme Court held that breath-test results obtained after a DataMaster machine produced a “standard out of range” error were admissible in the criminal DUI prosecution because the defendant’s objections concerned reliability and weight rather than the statutory foundation for admissibility. In the civil license-suspension proceeding, however, the defendant’s expert evidence was sufficient to rebut the statutory presumption that the test results were valid, reliable, and accurate. The court reversed and remanded the civil suspension judgment while affirming the denial of suppression in the criminal case.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Burgess, J.; Reiber, C.J.; Robinson, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	November 27, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed both the denial of suppression in his criminal DUI prosecution and the judgment for the State in the civil suspension proceeding. The Supreme Court affirmed the criminal ruling and reversed and remanded the civil suspension judgment.
STANDARD OF REVIEW	The court deferred to factual findings and reviewed legal questions de novo on the criminal suppression issue. It reviewed factual findings concerning breath-test reliability in the civil suspension proceeding for clear error.
PRECEDENTIAL VALUE	Published, precedential Vermont Supreme Court opinion
PARTIES	Burnett v. State of Vermont

TOPICS

- suppression of evidence
- evidence
- criminal procedure
- administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether breath-test results obtained after a DataMaster machine issued standard-out-of-range errors were inadmissible because the officer failed to follow training-manual procedures.
2. Whether the discrepancy between the two breath-test results defeated the foundation for admissibility.
3. Whether defendant presented sufficient case-specific evidence to rebut the statutory presumption that the breath-testing methods were valid and reliable and the results accurate in the civil license-suspension proceeding.
4. Whether the reliability of the second test and compliance with the statutory second-test requirement should be determined on remand.

HOLDINGS

1. A breath-test result is admissible when the State establishes that the analysis was performed by an instrument meeting the Department of Health's performance standards and that the instrument met those standards while analyzing the sample. An officer's failure to follow training-manual procedures after an error message generally concerns the reliability and weight of the evidence, not admissibility, where the Department's performance standards do not incorporate those procedures.
2. A discrepancy between two breath-test results does not defeat admissibility absent a Department of Health requirement that the results fall within a specified range or evidence showing that the discrepancy demonstrates failure to meet the Department's performance standards.
3. Once the State establishes admissibility, the statutory presumption that the testing methods were valid and reliable and that the results were accurate may be rebutted by evidence fairly and reasonably tending to show that reliability or accuracy was lacking in the particular case. Defendant's case-specific expert evidence was sufficient to rebut the presumption.

KEY QUOTATIONS

"Defendants can contest the foundation facts, but "may not otherwise challenge the admissibility of a test result although they may, of course, urge the jury to give it no weight."" (195 Vt. at 284)

"This presumption is not about admissibility, but concerns the burden of production." (195 Vt. at 288)

"It is up to the factfinder to resolve the conflict." (195 Vt. at 290)

FACTUAL BACKGROUND

A Burlington police officer stopped defendant after observing speeding and erratic driving and arrested him for suspected DUI. At the police station, defendant agreed to evidentiary breath testing on a DataMaster machine; after two standard-out-of-range errors, the officer restarted the machine and obtained readings of .229 and .260. Defendant's expert testified that the machine's error history, the officer's failure to follow training procedures, and the discrepancy between results raised case-specific reliability concerns.

PROCEDURAL HISTORY

After a traffic stop, defendant was charged with criminal DUI and subjected to a civil driver's-license suspension. The trial court denied suppression in the criminal case, concluded that the breath-test evidence was admissible but that defendant had not rebutted the civil proceeding's statutory reliability presumption, and entered judgment for the State. Defendant entered a conditional guilty plea in the criminal case and appealed both judgments.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine in the civil suspension proceeding whether the breath-test results were reliable or unreliable by weighing the State's and defendant's expert evidence. It should also address, if necessary, the reliability of the second test and compliance with the statutory second-test requirement. The denial of suppression in the criminal proceeding remains affirmed.

CASES CITED

- State v. Fletcher, 2010 VT 27, ¶ 8, 187 Vt. 632, 996 A.2d 213 (mem.)
- State v. Rolfe, 166 Vt. 1, 686 A.2d 949 (1996)
- State v. McQuillan, 2003 VT 25, 175 Vt. 173, 825 A.2d 804
- State v. Massey, 169 Vt. 180, 730 A.2d 623 (1999)
- State v. Vezina, 2004 VT 62, 177 Vt. 488, 857 A.2d 313 (mem.)
- State v. Anderson, 2005 VT 80, 179 Vt. 43, 890 A.2d 68
- State v. Pluta, 157 Vt. 451, 600 A.2d 291 (1991)
- State v. Giard, 2005 VT 43, 178 Vt. 544, 871 A.2d 976 (mem.)
- State v. Wells, 172 Vt. 603, 779 A.2d 680 (2001) (mem.)
- State v. Spooner, 2012 VT 90, 192 Vt. 465, 60 A.3d 640
- State v. Howe, Nos. 2006-429, 2006-432, 2007 WL 5313288 (Vt. Mar. 28, 2007) (unpub. mem.)
- State v. Springer, Nos. 2006-433, 2006-434, 2007 WL 5315017 (Vt. Feb. 28, 2007) (unpub. mem.)
- Kennedy v. Director of Revenue, 73 S.W.3d 85 (Mo. Ct. App. 2002)
- Verdoorn v. Director of Revenue, 119 S.W.3d 543 (Mo. 2003)