

# SUPREME JUDICIAL COURT OF MAINE

## State of Maine v. Chad H. Tozier

2015 ME 57 (Supreme Judicial Court of Maine 2015) · No. Aro-14-12 · Decided May 7, 2015

### SUMMARY

The Maine Supreme Judicial Court vacated an order excluding a self-contained breath-alcohol test result in a criminal operating-under-the-influence prosecution. The majority held that, after a defendant's ten-day notice under 29-A M.R.S. § 2431(2)(D), the State must provide a qualified witness but need not provide an expert witness regarding the functioning of the breath-testing equipment, provided the statutory foundational requirements are satisfied. The dissent would have required expert testimony to address the operation and scientific reliability of the Intoxilyzer under the Confrontation Clause.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Judicial Court of Maine                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Mead, J.; Saufley, C.J.; Alexander, J.; Gorman, J.; Jabar, J.; Hjelm, J.                                                                                                                                                                                     |
| JURISDICTION          | Maine                                                                                                                                                                                                                                                        |
| DECIDED               | May 7, 2015                                                                                                                                                                                                                                                  |
| DOCKET                | Aro-14-12                                                                                                                                                                                                                                                    |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | The State appealed from an order granting Tozier's motion in limine and excluding a self-contained breath-alcohol test result because the trial court concluded that the State had not produced a qualified witness as required by 29-A M.R.S. § 2431(2)(D). |
| STANDARD OF REVIEW    | Questions of statutory interpretation and application of the Confrontation Clause are reviewed de novo.                                                                                                                                                      |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                               |
| PARTIES               | State of Maine v. Chad H. Tozier                                                                                                                                                                                                                             |

### TOPICS

criminal procedure

evidence

statutory interpretation

sixth amendment

appellate procedure

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether 29-A M.R.S. § 2431(2)(D) requires the State to produce an expert witness when a defendant gives ten days' notice requesting a qualified witness concerning a self-contained breath-alcohol test.
2. Whether admission of a machine-generated breath-alcohol result through the testimony of the officer who administered the test, without expert testimony concerning the machine's functioning, violates the Sixth Amendment Confrontation Clause.

## HOLDINGS

1. A defendant's ten-day notice under section 2431(2)(D) requires the State to produce a witness qualified to testify to the matters otherwise covered by the certificate, but it does not require the State to produce an expert witness.
2. The Confrontation Clause does not require the State to produce an expert concerning the inner workings of a self-contained breath-alcohol testing machine when the administering officer is available to testify about the administration of the test.

## KEY QUOTATIONS

*“The Department stamps of approval and/or statement of the manufacturer, as referenced in subsections H and I, provide the foundational requirements for the admission of the self-contained breath-alcohol test result in evidence.”* (¶ 14)

*“Unlike such a report drafted by a laboratory analyst who operates sophisticated scientific testing equipment, however, the only actions reflected in a certificate generated by a self-contained breath-alcohol machine are the internal actions of the machine itself.”* (¶ 21)

## FACTUAL BACKGROUND

On August 19, 2012, a certified police officer used an Intoxilyzer to test Tozier's breath after conducting a calibration check. The machine produced two breath samples and reported a breath-alcohol content of 0.18 grams per 210 liters of breath. Tozier gave the State ten days' notice requesting a qualified witness under 29-A M.R.S. § 2431(2)(D); the State produced the administering officer but no expert witness.

## PROCEDURAL HISTORY

Tozier was charged in the Houlton District Court with criminal operating under the influence and requested a jury trial, resulting in transfer to the Aroostook County Superior Court. After providing ten days' notice requesting a qualified witness, Tozier moved to exclude the Intoxilyzer result when the State produced only the officer who administered the test and no expert. The Superior Court granted the motion, and the State obtained approval to appeal and filed a timely appeal.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

The order excluding the breath-alcohol test result was vacated, and the matter was remanded for further proceedings consistent with the opinion.

## CASES CITED

- State v. Lowden, 2014 ME 29, 87 A.3d 694
- State v. Jones, 2012 ME 88, 46 A.3d 1125
- Griffin v. Griffin, 2014 ME 70, 92 A.3d 1144
- State v. Kennedy, 2002 ME 5, 788 A.2d 174
- State v. Johnson, 2014 ME 83, 95 A.3d 621
- Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009)
- Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011)
- State v. Ducasse, 2010 ME 117, 8 A.3d 1252
- Portland Pipe Line Corp. v. Environmental Improvement Commission, 307 A.2d 1 (Me. 1973)
- Ford Motor Co. v. Darling's, 2014 ME 7, 86 A.3d 35
- State v. Williams, 2012 ME 63, 52 A.3d 911
- Davis v. Washington, 547 U.S. 813 (2006)
- State v. Metzger, 2010 ME 67, 999 A.2d 947
- Maryland v. Craig, 497 U.S. 836 (1990)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Kentucky v. Stincer, 482 U.S. 730 (1987)
- United States v. Moon, 512 F.3d 359 (7th Cir. 2008)
- United States v. Washington, 498 F.3d 225 (4th Cir. 2007)
- State v. Crooker, 123 Me. 310, 122 A. 865 (1923)
- State v. Muldowny, 871 So. 2d 911 (Fla. Dist. Ct. App. 2004)