

SUPREME COURT OF OKLAHOMA

Mark M. Muratore v. State of Oklahoma ex rel. Department of Public Safety

2014 OK 3 (Okla. 2014) · No. 111586 · Decided January 28, 2014

SUMMARY

The Oklahoma Supreme Court reviewed the revocation of Mark Muratore's driver's license following an Intoxilyzer 8000 breath test. The Court held that certificates of calibration and gas analysis prepared by private entities were inadmissible hearsay without a proper exception or foundation, and that the Department of Public Safety failed to prove that the breath test was conducted on a properly maintained device. The Court vacated the Court of Civil Appeals' decision and affirmed the trial court's order vacating the revocation.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Colbert, C.J.; Reif, V.C.J.; Kauger, J.; Edmondson, J.; Combs, J.; Gurich, J.; Watt, J.; Winchester, J.; Taylor, J.
JURISDICTION	Oklahoma
DECIDED	January 28, 2014
DOCKET	111586
DISPOSITION	vacated
PROCEDURAL POSTURE	The Department of Public Safety appealed the Oklahoma County District Court's order vacating Muratore's driver's-license revocation. The Court of Civil Appeals reversed the district court. The Oklahoma Supreme Court granted certiorari, vacated the Court of Civil Appeals' opinion, and affirmed the district court.
STANDARD OF REVIEW	The district court reviews a driver's-license revocation de novo, as a trial of the entire case anew on law and facts. On appellate review, the Supreme Court will not reverse if any evidence or reasonable inference supports the district court's findings. Evidentiary rulings concerning hearsay exceptions are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published, precedential Oklahoma Supreme Court opinion

PARTIES

State of Oklahoma ex rel. Department of Public Safety v. Mark M. Muratore

TOPICS

hearsay evidence administrative law judicial review of agency action appellate procedure

PRACTICE AREAS

administrative law evidence appellate procedure driver's-license revocation

QUESTIONS PRESENTED

1. Whether the manufacturer's calibration certificate and the gas supplier's certificate of analysis were admissible under the public-records or business-records exceptions to the hearsay rule.
2. Whether the certificates were relevant to proving that the Intoxilyzer 8000 and its reference gas were functioning properly at the time of Muratore's test.
3. Whether the Department met its burden in the district court to prove all facts necessary to sustain the driver's-license revocation, including that a valid breath test was performed on a properly maintained device.
4. Whether the district court's decision to vacate the revocation was supported by the evidence.

HOLDINGS

1. The certificates were not admissible under the public-records exception because they were prepared by private third parties rather than by the Board of Tests or another public official.
2. The certificates were not admissible under the business-records exception because DPS failed to provide testimony or proper certification establishing the foundational requirements of the exception.
3. The certificates were independently inadmissible because they did not establish that the Intoxilyzer 8000 or gas canister was functioning properly at the time of Muratore's arrest and test.
4. DPS failed to meet its threshold burden of proving all facts necessary to sustain the revocation because the Board of Tests had not implemented rules governing maintenance of the Intoxilyzer 8000.

KEY QUOTATIONS

"To revoke a driver's license based upon a breath test result and a sworn report from a law enforcement officer, DPS bears the burden in the district court of proving by a preponderance of the evidence "all facts necessary to sustain the revocation, including the operation/actual physical control of a motor vehicle while intoxicated, a valid arrest, proper advice of rights and consequences, as well as consent to and performance of a valid test on a properly maintained testing device."" (§ 5)

"Although some courts have determined these types of certificates are nontestimonial evidence and admissible in criminal cases under the Confrontation Clause, the certificates are not admissible in this case under the public records exception to the hearsay doctrine because they were not prepared by a public official

and are not admissible under the business records exception to the hearsay doctrine because DPS failed to lay a proper foundation for the admission of the certificates as required under that exception.” (¶ 15)

“DPS did not meet its threshold burden of proving all the facts necessary to sustain the revocation of Mr. Muratore's license, and the trial court's decision to vacate the revocation of Mr. Muratore's Driver's License is affirmed.” (¶ 22)

FACTUAL BACKGROUND

Muratore was arrested for driving under the influence and voluntarily submitted to two breath samples on an Intoxilyzer 8000, both reporting an alcohol concentration of .11g/210L. The arresting officer's affidavit contained errors concerning the arrest date, service date, and signing date. The Department sought to introduce a manufacturer's calibration certificate and a gas supplier's certificate of analysis, but neither document was prepared by a public official, and no custodian or qualified witness supplied the foundation required for the business-records exception. The Board of Tests also had not implemented prescribed maintenance procedures for the Intoxilyzer 8000.

PROCEDURAL HISTORY

After an administrative hearing officer sustained the revocation of Muratore's driver's license, Muratore appealed to the Oklahoma County District Court. Following a trial de novo, the district court refused to admit certificates relating to calibration of the Intoxilyzer 8000 and analysis of its gas canister, and vacated the revocation. The Court of Civil Appeals reversed, but the Supreme Court granted certiorari and reinstated the district court's judgment.

DISPOSITION

vacated

CASES CITED

- Appeal of Dungan, 1984 OK 21, 681 P.2d 750
- Derrick v. State ex rel. Department of Public Safety, 2007 OK CIV APP 56, 164 P.3d 250
- Smith v. State ex rel. Department of Public Safety, 1984 OK 16, 680 P.2d 365
- Westerman v. State, 1974 OK CR 151, 525 P.2d 1359
- Hedrick v. The Commissioner of the Department of Public Safety, 2013 OK 98
- Kerr v. Clary, 2001 OK 90, 37 P.3d 841
- Hollis v. State ex rel. Department of Public Safety, 2008 OK 31, 183 P.3d 996
- Weathers v. Fulgenzi, 1994 OK 119, 884 P.2d 538
- Hadley v. Ross, 1944 OK 366, 154 P.2d 939
- Matter of W.D., 1985 OK 65, 709 P.2d 1037
- State v. Pugh, 225 P.3d 892 (Wash. 2009)
- Taylor v. State, 2011 OK CR 8, 248 P.3d 362

- Crawford v. Washington, 541 U.S. 36 (2004)
- United States v. Hendricks, 395 F.3d 173 (3d Cir. 2005)
- Davis v. Washington, 547 U.S. 813 (2006)
- Clark v. State ex rel. Department of Public Safety, 2007 OK CIV APP 12, 153 P.3d 77
- Cornett v. Carr, 2013 OK 30, 302 P.3d 769
- Depuy v. Hoeme, 1989 OK 42, 775 P.2d 1339

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