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Summary of State of Nevada, DMV v. Taylor-Caldwell, 125 Nev. Adv. Op. No. 14

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State of Nevada, DMV v. Taylor-Caldwell, 125 Nev. Adv. Op. No. 14 (May 6, 2010)¹
CRIMINAL LAW

Summary

Consideration of whether Nev. Rev. Stat. §484.384 mandates driver's license revocation when two consecutive breath samples are obtained from a DUI suspect and only one breath sample tests over the legal limit for alcohol.

Disposition/Outcome

The Court held Nev. Rev. Stat. §484.384 requires only one breath sample obtained from a DUI suspect to be over the legal alcohol concentration limit to mandate revocation of the suspect's driver's license by the DMV.

Factual and Procedural History

Taylor-Caldwell was arrested by Nevada Highway Patrol for driving under the influence (DUI) and was given two consecutive breath alcohol tests. Taylor-Caldwell's first breath sample tested under the legal limit of 0.08 breath alcohol concentration, at 0.073, and her second sample tested over the limit at 0.083.

Taylor-Caldwell requested an administrative hearing after the Nevada DMV revoked her driver's license pursuant to Nev. Rev. Stat. §484.385. The administrative law judge affirmed the revocation, and Taylor-Caldwell sought judicial review in Nevada district court. The district court reversed the revocation, concluding that Nev. Rev. Stat. §§ 484.384 and 484.386 read together mandated both breath samples be considered in order to establish the alcohol concentration in a driver's breath.

Discussion

Nev. Rev. Stat. §484.386 provides evidentiary requirements for breath alcohol tests, requiring: (1) that two consecutive breath samples be taken from the driver, and (2) that the difference in alcohol concentration be less than or equal to 0.02.² Nev. Rev. Stat. §484.384(1) provides "[i]f the result of a test . . . shows that a person had a concentration of alcohol of 0.08 or

¹ Summarized by David Krawczyk

² Nev. Rev. Stat. §484.386(1) (2007).

more in his blood or breath at the time of the test, his license, permit or privilege to drive must be revoked.”³

The Court held that a single failed breath alcohol concentration test will precipitate driver’s license revocation. Agreeing with the DMV, the Court determined the Nevada Legislature’s use of the singular “result” and “test” in Nev. Rev. Stat. §484.384 indicate that only one breath sample must be over the legal limit.

Moreover, the Court held the requirement that law enforcement obtain two test results within 0.02 of each other pursuant to Nev. Rev. Stat. §484.386 is an evidentiary requirement to validate the breath alcohol test, rather than a requirement for both breath samples to test over the legal alcohol limit to compel driver’s license revocation. Accordingly, the court concluded that a single breath sample is sufficient to prove Taylor-Caldwell’s breath alcohol was above the legal limit and upheld the DMV’s revocation of her driver’s license.

Conclusion

When two consecutive breath alcohol tests are administered pursuant to Nev. Rev. Stat. §484.386, a single result indicating breath alcohol content in excess of the legal limit will necessitate driver’s license revocation pursuant to Nev. Rev. Stat. §484.384.

³ Nev. Rev. Stat. §484.384(1) (2007).