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Summary of Wright v. Dep't of Motor Vehicles, 121 Nev. Adv. Op. 14

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***Wright v. Dep't of Motor Vehicles*, 121 Nev. Adv. Op. 14 (2005), 110 P.3d 1066¹**

CRIMINAL LAW – REASONABLE GROUNDS – INTOXICATION

Summary

The defendant appealed the Department of Motor Vehicles' (DMV) revocation of his driver's license because he believed the arresting officer was without reasonable grounds for ordering an evidentiary blood alcohol test.² Defendant also challenged the reliability of the field sobriety test ("FST") as administered and questioned whether the DMV revoked his privileges with proper authority.³

Disposition/Outcome

Affirmed. The Nevada Supreme Court ("the Court") found that the arresting officer had reasonable grounds to issue an evidentiary blood alcohol test, FSTs are sufficiently reliable, and the DMV had proper revocation authority.⁴

Factual and Procedural History

Defendant Kevin Wright ("Wright") was involved in a traffic accident in January of 2002. Officer Lewis responded to the scene, and upon arrival observed Wright outside his vehicle, standing in the flow of traffic. The officer observed that Wright's gait was unsteady, that he had to use a vehicle to hold himself upright, and that he smelled of alcohol. Wright revealed that he had consumed approximately four drinks.

Officer Lewis then proceeded to conduct a FST. It was at that time that Wright informed the officer that he had knee problems and that he had undergone several knee surgeries. Taking Wright's assertion into consideration, the officer administered various FSTs that would not affect Wright's knee problem, including a horizontal gaze nystagmus test.

Based on the officer's observations and Wright's performance of the FSTs, Officer Lewis placed Wright under arrest for driving under the influence and following too closely. A blood sample taken at the Henderson Detention Center revealed that Wright's blood alcohol content (BAC) was .23 grams per 100 milliliters of blood.

Under N.R.S. 484.385(2), Officer Lewis submitted a request for revocation of Wright's license to the DMV. The DMV revoked Wright's license, and later conducted an administrative hearing where the hearing officer upheld the revocation. Wright subsequently petitioned for judicial review, which the district court denied.

Discussion

¹ By Scott McDonald

² *Wright v. DMV*, 110 P.3d 1066, 1068 (Nev. 2005).

³ *Id.* at 1069-70.

⁴ *Id.* at 1068-70.

The appellant raised three points of contention: (1) the officer ordered the blood test without reasonable grounds; (2) FSTs are unreliable; and (3) the DMV lacked jurisdiction to initiate a license revocation proceeding. The Court found all three arguments unpersuasive.

Reasonable Grounds for Evidentiary Testing

Under NRS 484.383(1), an officer needs only reasonable grounds to believe an individual is under the influence of alcohol to order an evidentiary blood, breath, or urine test.⁵ Wright contended that the Court in *DMV v. McLeod*,⁶ stated that the reasonable grounds requirement was only satisfied when an officer smells alcohol on an individual's breath and observes the individual's bloodshot eyes. In *McLeod*, however, the Court simply stated that the presence of these factors were merely indicators of reasonable grounds, and never made such indicators requirements.⁷

Wright argued that because he did not have bloodshot eyes, the officer lacked reasonable grounds under *McLeod* to order an evidentiary blood alcohol test. However, the Court stated: "An officer may consider many other factors when determining whether reasonable grounds exist for an evidentiary test."⁸ Here, because Wright rear-ended another vehicle, smelled of alcohol, admitted to consuming four alcoholic drinks, had an unsteady gait, could not balance himself, and failed a series of FSTs, the Court held the officer had sufficient reasonable grounds to order the evidentiary blood alcohol test.⁹

Reliability of Field Sobriety Testing

Wright then argued, without the support of authority or tangible evidence, that field sobriety testing is inherently unreliable and therefore could not serve as the basis for reasonable grounds under NRS 484.383(1).¹⁰ Wright based his argument on a National Highway Transportation Safety Administration (NHTSA) Student Manual, which he failed to produce for the Court. The manual allegedly states that all FSTs should be administered in a standardized manner and that physical disabilities may inhibit the ability of an individual to adequately perform any FST that requires balance.¹¹ Given the lack of evidentiary support, and the fact that the officer took into account Wright's asserted disability, the Court rejected Wright's challenge to the validity of FSTs.¹²

DMV's Revocation Authority

⁵ NEV. REV. STAT. 484.383(1) (2004) deems any person who "drives or is in actual physical control of a vehicle on a [public] highway" to have given "consent to an evidentiary test of his blood, urine, breath or other bodily substance ... if such a test is administered at the direction of a police officer having reasonable grounds to believe that the person to be tested was ... under the influence of intoxicating liquor or a controlled substance."

⁶ 801 P.2d 1390 (1990).

⁷ *Id.* at 1392; *see also Wright*, 110 P.3d at 1069.

⁸ *Wright*, 110 P.3d at 1069.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Wright's final assertion that the DMV lacked revocation authority was based on his belief that the DMV lacked sufficient information.¹³ The officer's certification to the DMV of Wright's evidentiary blood alcohol test result included language from the old statutory provision, NRS 484.385(2).¹⁴ The Court found that although the new standard's language in NRS 484.038 varied slightly from NRS 484.385(2), the required threshold level was still the same.¹⁵ Because Wright's BAC result was 0.23 gram per 100 milliliters of blood, which exceeded the 0.10 threshold,¹⁶ and the officer properly submitted this certification to the DMV, the DMV's revocation of Wright's license under NRS 484.385(2) was appropriate.¹⁷

Conclusion

The officer had observed sufficient indicators of intoxication to support a finding of reasonable grounds to order an evidentiary blood alcohol test, the FST as administered was sufficiently reliable, and the DMV had the proper authority to revoke Wright's license.

¹³ *Id.* at 1070.

¹⁴ *Id.* The old provision required "a concentration of alcohol of [0.10] or more in his blood. *Id.* The new standard, NRS 484.038, requires "[0.10] gram or more of alcohol per 100 milliliters of blood." *Id.* The required level is placed in brackets because subsequent to Wright's appeal the Nevada Legislature, in 2003, lowered the required threshold level to 0.08. *Id.* at 1070 n.11.

¹⁵ *Id.* at 1070.

¹⁶ *Id.* at 1068.

¹⁷ *Id.* at 1070.