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Valenti v. Nev. Dep't of Motor Vehicles, 131 Nev. Adv. Op. 87 (Nov. 5, 2015)

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EVIDENCE: EXPERTS

Summary

The Court determined that a “chemist” as defined by NRS § 50.320² must be qualified as an expert in a Nevada court of record prior to the admission of his or her affidavit attesting to an individual’s blood-alcohol concentration in a driver’s license revocation hearing.

Background

On July 1, 2012, Vincent Valenti was pulled over for making two lane changes without signaling. The Nevada Highway Patrol Trooper observed signs of intoxication, and initiated several field sobriety tests. The test performances revealed signs of impairment, so the Trooper initiated a preliminary breath test. Valenti’s breath test indicated a blood-alcohol concentration of 0.154. Valenti was then arrested and transported to the Clark County Detention Center. Upon arrival, Valenti submitted to a blood test. Forensic scientist Christine Maloney conducted the blood-analysis, which revealed a blood-alcohol concentration of 0.159.

The Department of Motor Vehicles then notified Valenti in writing that his driver’s license was being revoked. Valenti requested an administrative hearing to contest the revocation. At the hearing, the administrative law judge admitted Maloney’s affidavit into evidence over Valenti’s objection. The affidavit stated that she was a chemist as defined under NRS § 50.320(5),³ and that Valenti’s blood-alcohol concentration was 0.159 at the time of testing. Maloney’s affidavit did not state whether she had been previously qualified as an expert in a Nevada court of record.

The administrative law judge concluded Valenti’s blood alcohol concentration was 0.08 or more at the time of the traffic stop. The judge explained that pursuant to *Cramer v. State*,⁴ there are two classes of persons under NRS § 50.320,⁵ “chemists” and “any other persons,” and a chemist is not required to qualify as an expert before his or her affidavit is admitted into evidence.

Valenti then petitioned the district court for judicial review. The district court denied Valenti’s petition, concluding that Maloney’s affidavit indicated she was a chemist, and was therefore admissible.

¹ By Shannon Diaz.

² NEV. REV. STAT. § 50.320 (2009).

³ NEV. REV. STAT. § 50.320(5) (2009).

⁴ 126 Nev. 388, 240 P.3d 8 (2010).

⁵ NEV. REV. STAT. § 50.320 (2009).

Discussion

The language of NRS 50.320(1) is ambiguous

The Court concluded that a plain reading of NRS § 50.320(1)⁶ can “reasonably be read to offer different meanings.” One possible reading is that the “affidavits of both chemists and other persons are admissible as evidence in an administrative proceeding only if the affiant has been qualified previously as an expert in alcohol concentration in a Nevada court of record.” In this reading both “chemists” as well as “any other person” must be qualified in a Nevada court of record. Another possible reading is that “‘any other person’ is subject to the expert qualification requirement, but a ‘chemist’ is not.” “Because NRS § 50.320(1)⁷ may be read to render meanings at odds with one another, its language is ambiguous.”

The Legislature has expressed no intent to release chemists from the established expert qualification requirement

When a statute is ambiguous, the Court looks to legislative intent.⁸ The Court determined that in 1995, a “chemist” was “additionally named as an individual whose expert affidavit must be admitted.” At that time the “Legislature espoused no intent to treat chemists differently, nor was any intent to treat chemists differently espoused when the 2009 Legislature added a definition to the term chemist.” Therefore, because the 2009 Legislature did not intend to “revoke the established requirement that chemists be court-qualified” the Court concluded that “such an attenuated conclusion is without justification.”⁹

The reasoning and public policy set forth in Cramer v. State further direct that the court qualification requirement should be maintained for all experts, including chemists

In *Cramer*,¹⁰ the Court maintained the expert qualification requirement for experts, but declined to extend the holding to chemists. The Court reasoned that “[a]llowing an affidavit from a proposed expert, which lacks the reliability and trustworthiness of an affidavit from one who has been qualified to testify as an expert, would violate NRS § 50.320’s plain meaning and lead to absurd results.”¹¹ “[T]he same concerns for reliability and trustworthiness of an expert affidavit arise when a person who is statutorily defined as a chemist is the affiant.” The Court, therefore, expanded the holding in *Cramer* to “include chemists under the umbrella of experts subject to NRS § 50.320(1)’s expert qualification requirement.”

Conclusion

Maloney’s affidavit which indicated that she was a chemist but failed to state whether she had been qualified in a Nevada court of record, was inadmissible at Valenti’s revocation hearing. The Court then reversed the decision, and remanded the case to the district court.

⁶ NEV. REV. STAT. § 50.320(1) (2009).

⁷ *Id.*

⁸ See *Zohar v. Zbiegien*, 130 Nev. Adv. Op. 74, 334 P.3d 402, 405 (2014).

⁹ See *Presson v. Presson*, 38 Nev. 203, 208, 147 P. 1081, 1082 (1915).

¹⁰ 126 Nev. 388, 240 P.3d 8 (2010).

¹¹ *Id.* at 394.