DUI / BUI

DUI/CIVIL SUSPENSION/IMMUNIZED TESTIMONY

State v. Neumann, 2007 VT 123

Defendant testified at his civil suspension hearing under the immunity statute in 23 VSA § 1205 (o). At the hearing, the court found that he did not refuse the test because he suffered from a pulmonary disease. The court granted a motion to suppress the alleged refusal in the DUI case. Then defense filed a motion for a Kastigar hearing to determine if the prosecutors' evidence was derived from his immunized testimony and to bar the prosecutor from continuing to act. Trial court denied the motion.

On appeal, J. Skoglund concludes that the immunity in § 1205 (o) is not coextensive with the constitutional privilege against compelled self-incrimination, even thought the defendant faced a hard testimonial choice. Therefore, the full Kastigar type protections are not appropriate. Instead, the appropriate procedure is that followed where a defendant testified pursuant to State v. Begins in a VOP proceeding prior to a criminal proceeding based upon the same conduct: the defendant must meet an initial burden of producing evidence that testimony offered at the criminal trial was in fact provided by the defendant at the civil suspension hearing. If this burden is met, the prosecution must then prove by a preponderance of the evidence that the testimony was not provided by the defendant at his civil suspension hearing. In this case, the defendant did not object to any evidence at trial on the basis that it violated the use immunity granted under § 1205(o), and no actual evidence is identified on appeal as objectionable on this basis. Therefore, there is no reason to reverse his conviction.

BUI/SINGLE COUNT FOR MULTIPLE DEATHS RESULTING/JURY INSTRUCTION

State v. Martin, 2007 VT 96

Affirming conviction of boating while intoxicated, death resulting, the Court clarified that V.R.E. 407, excluding evidence of subsequent remedial measures, does not apply to evidence of remedial measures taken by a nonparty. The Court also held that a jury instruction that defendant was exercising the right not to testify does not violate 13 V.S.A. § 6601, Article 10 of the Vermont Constitution, and the Fifth Amendment, even with timely objection. The Court, however, reversed the second conviction for the same offense, which was based on two deaths resulting from the BUI. The Court reasoned that because death resulting is not included in the criminalized conduct of the offense—the actus reus—multiple convictions where the statute does not defined crime with reference to the victim cannot stand.

DUI/INITIAL REFUSAL/SUBSEQUENT CONSENT/BREATHALYZER

State v. Bonvie, 2007 VT 82

The Court held that an initial refusal to take a breathalyzer test is cured when a defendant subsequently consents in good faith to taking a breathalyzer test within the statutory 30-minute window to contact an attorney established by 23 V.S.A. § 1202(c) and the standards in Standish, 683 P.2d at 1280. After consulting with an attorney, defendant declined to take the test. When the officer suspended his license, the defendant changed his mind and asked if he could take the test. The request was made within 30

minutes of the initial attempt to contact an attorney. The Court clarified that an officer is not required to wait for 30 minutes to pass after initial contact with an attorney to see if the defendant will reconsider, particularly where defendant has been abusive, assaultive, or otherwise uncooperative.

DUI/REASONABLE SUSPICION/TRAFFIC INTRA-LANE WEAVING
State v. Davis, 2007 VT 71 (mem.)

The trial court found no reasonable suspicion to stop the defendant's car. The videotape showed the defendant's car touching the centerline on I-89 several times and slight intra-lane weaving. No traffic violation and no reasonable suspicion. The Supreme Court agreed.

DUI/REASONABLE SUSPICION/TRAFFIC INTRA-LANE WEAVING
State v. Pratt, 2007 VT 68

The cop alleged that defendant's car touched the center line and the fog line 5-6 times. The trial court found that 5-6 times of weaving within one's own lane on I-89 could amount to reasonable suspicion. The Supreme Court agreed. What's the difference with State v. Davis? According to Justice Dooley, it was the officer's testimony that made the difference. The officer testified that in his training and experience intra-lane weaving showed that there was reasonable suspicion of impaired operation. Justices Johnson and Skoglund dissent, saying that the majority overreaches and over-interprets the caselaw from other jurisdictions to establish a bright line rule that intra-lane weaving is always grounds for reasonable suspicion of DUI. Intra-lane weaving may be a factor in reasonable suspicion, they argue, but it is not by itself always sufficient to support a stop.