

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2004-121, 2004-122 & 2004-318

MAY TERM, 2005

State of Vermont
v.
Ellen McGreevey

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APPEALED FROM:
District Court of Vermont,
Unit No 3, Orleans Circuit
DOCKET NO. 470-7-03 OsCr
Trial Judge: Dennis R. Pearson

State of Vermont
v.
Anthony Mason

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District Court of Vermont,
Unit No 3, Orleans Circuit
DOCKET NO. 593-9-03 OsCr
Trial Judge: Dennis R. Pearson

State of Vermont
v.
Geoffrey Pelletier

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}
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}

District Court of Vermont,
Unit No 3, Caledonia Circuit
DOCKET NO. 8-1-04 Cacr
Trial Judge: Kathleen Manley

In the above-entitled cause, the Clerk will enter:

Defendants in these consolidated DUI appeals contend the courts below erred in denying their motions to exclude the results of their blood alcohol breath tests. Defendants contend the test results should have been suppressed because the data-storage function of the DataMaster instruments used to administer the tests had been turned off pursuant to a directive of the Commissioner of Health. Based on our recent decision in In re Sleigh, 2005 VT 45, 16 Vt. L. Wk. 99, we affirm.

Defendants in each of these three DUI cases moved to suppress their evidentiary breath test results on the ground that the State had violated a statutory duty to collect, preserve, and produce data in the memory of the DataMaster instruments used to measure their blood alcohol concentration (BAC). The trial court denied the motions, and defendants entered conditional pleas. These appeals, which we have consolidated for purposes of review, followed.

Defendants' sole contention on appeal is that the State violated a mandatory statutory duty to collect and preserve data in the memory function of the DataMaster instruments, thereby violating their right to a fair trial and requiring suppression of the test results. We recently considered the identical issue, in a slightly different context, in Sleigh. In that case, the State appealed a Board of Health decision directing the Commissioner to reverse an earlier order terminating the data-collection function in the DataMaster machines. We held: (1) the Board lacked jurisdiction to review the Commissioner's decision, 2005 VT 45, ¶ 12, and (2) "[t]here is no law that requires law enforcement to utilize the DataMaster data-collection function, and the Commissioner is under no statutory duty to either maintain or disable this function." Id. ¶ 14. Our holding in Sleigh defeats defendants' contention that the State had a mandatory statutory duty to collect the data in the DataMaster machines, as well as their subsidiary claim that the trial court was bound by the Board's findings and conclusions. Accordingly, there is no basis to disturb the judgments.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice