

# State v. McGinn

**Case Number**

S-18-0744

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April 24, 2019

**Court Number**

Holt

**Case Location**

Lincoln

**Case Summary**

S-18-0744 State v. Danny J. McGinn (Appellant)

Holt County District Court, Judge Mark D. Kozisek

Attorneys: Nathan A. Liss (Office of the Attorney General, for Appellee) --- Forrest F. Peetz (Peetz Law, P.C., L.L.O., for Appellant)

Criminal: DUI; Sufficiency of the evidence

Proceedings below: The county court denied Appellant's motion to suppress, finding that Neb. Rev. Stat. § 60-6,199 was not violated, after which it admitted Appellant's breath test result at trial and found him guilty of DUI. On appeal, the district court disagreed with the county court and found that Neb. Rev. Stat § 60-6,199 was violated, but nonetheless affirmed because it found that the breath test result was harmless given that the other properly admitted evidence showed that Appellant was "under the influence," an alternative and sufficient basis for Appellant to be guilty of DUI.

Issues: 1) The trial court erred by failing to sustain Appellant's motion in limine/motion to suppress regarding admission of the State's breathalyzer test results upon timely objection by Appellant for lack of sufficient foundation pursuant to Neb. Rev. Stat. § 60-6,199, 2) the trial court erred by overruling Appellant's motion to exclude evidence of the State's breathalyzer test result at trial for lack of sufficient foundation pursuant to Neb. Rev. Stat. § 60-6,199, 3) the trial court violated Appellant's due process rights because he was denied the opportunity to obtain exculpatory evidence through an independent blood test, and 4) the district court erred by ruling there was sufficient other evidence for the trial court to find Appellant guilty.

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