

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Willis and Annunziata  
Argued at Alexandria, Virginia

FRANK CASTRO, s/k/a  
FRANK D. CASTRO

v. Record No. 0216-99-4

MEMORANDUM OPINION\* BY  
JUDGE JAMES W. BENTON, JR.  
JANUARY 11, 2000

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY  
Charles H. Duff, Judge Designate

Peter M. Baskin (Pelton, Balland, Young,  
Demsky, Baskin & O'Malie, P.C., on brief),  
for appellant.

H. Elizabeth Shaffer, Assistant Attorney  
General (Mark L. Earley, Attorney General, on  
brief), for appellee.

Frank D. Castro conditionally pled guilty to a charge of driving under the influence of alcohol, reserving his right to appeal the admissibility of the breath analysis certificate. He contends the trial judge erred in ruling that the police officer's training to administer the breath test complied with the requirements of Code § 18.2-268.9. We disagree and affirm the conviction.

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\* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

I.

We addressed the requirements of Code § 18.2-268.9 in Reynolds v. Commonwealth, 30 Va. App. 153, 515 S.E.2d 808 (1999). There, we held that an officer who had received forty hours of training on the Breathalyzer 900-A instrument and an additional eight hours of training on the Intoxilyzer 5000 met the requirements of the statute. See id. at 160-62, 515 S.E.2d at 811-13. That holding is dispositive of the issue raised in this appeal.

The evidence proved that the officer possessed a current license issued by the Division of Forensic Sciences to operate breath test equipment. The officer testified that he received forty hours of training concerning the Breathalyzer 900-A at the Division of Forensic Sciences during a one-week course in 1996. In 1998, he completed an additional eight-hour course concerning the operation of the Intoxilyzer 5000, which is the machine he used to test Castro.

On cross-examination, the officer testified that the forty hours of training covered the theory, administration, and operation of the Breathalyzer 900-A. The training also included instruction on toxicology, pharmacology, physiology, and the effects of alcohol on the human body. The eight hours of additional training the officer received in 1998 related "predominately [to] usage of the [Intoxilyzer 5000]." The course

included instruction about the parts of the machine, the procedures to be followed, and the operation of the machine.

In Reynolds, we ruled as follows:

[W]e hold that Code § 18.2-268.9 requires forty hours of training on "breath test equipment" in general and does not mandate the instruction on a particular make or model. The language of the statute refers to forty hours of instruction on "the breath test equipment and the administration of such tests." Code § 18.2-268.9 (emphasis added). Contrary to appellant's interpretation, the statute does not limit the training program to a particular machine; rather, it requires training on "breath test equipment" and the procedures involving the breath tests. If the legislature had intended that operators undergo a forty-hour training program for each individual type of breath test equipment, then it would have said so in the statute.

30 Va. App. at 160, 515 S.E.2d at 811.

We decline Castro's invitation to scrutinize the forty-hour course established by the Division of Forensic Sciences and to find that certain isolated topics do not apply to the operation of breath test equipment or the administration of breath tests. Nothing in Code § 18.2-268.9 or the administrative regulations enacted to implement the statute, see 1 Va. Admin. Code § 30-50-100, at 99-100 (1996), requires a licensee to take forty hours of training on each breath test device. Applying the ruling in Reynolds, we hold that the trial judge did not err in admitting the results of the Intoxilyzer 5000 breath test.

Accordingly, we affirm the conviction.

Affirmed.