VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 25-AP-360

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

NOVEMBER TERM, 2026

State of Vermont v. Sean E. Devoid* } APPEALED FROM:
} Superior Court, Rutland Unit,
} Criminal Division
} CASE NO. 24-CS-00639
Trial Judge: Cortland Corsones

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

Defendant appeals the civil suspension of his driver's license. We affirm.

The following facts are undisputed for purposes of this appeal. On September 1, 2024, defendant was driving on Route 7 in Pittsford when his vehicle went off the road. A state trooper responded to the scene at 11:30 p.m. Defendant initially denied consuming any alcohol but later told the trooper that he had "maybe three beers two hours ago." The trooper observed that defendant's eyes were watery and his breath smelled of intoxicants. Defendant refused to undergo sobriety tests or give a preliminary breath sample. The trooper arrested defendant on suspicion of driving under the influence (DUI) and transported him to the barracks, where defendant refused to give an evidentiary breath test. The trooper issued a notice of intention to suspend defendant's driver's license pursuant to 23 V.S.A. § 1205(a)(1). See id. (providing for automatic suspension of driver's license when DUI suspect refuses to submit to test). The court held a preliminary hearing on the civil suspension on September 30, 2024, at which time defendant was also arraigned on criminal charges of DUI-third offense and negligent operation. Following an evidentiary hearing in September 2025, the court entered judgment for the State in the civil-suspension proceeding.

Defendant's sole argument on appeal is that the trial court lacked jurisdiction to issue the civil-suspension order because the preliminary hearing took place more than twenty-one days after the offense, in violation of 23 V.S.A. § 1205(g). That statute provides that in a civil-suspension proceeding, "[t]he preliminary hearing shall be held within 21 days after the alleged offense." Id. In State v. Love, this Court held that the Legislature's enactment of § 1205(t), which stated that for a first offense, the time limits in § 1205(g) and (h) were directive only, meant that the time limits in § 1205(g) and (h) were "mandatory and jurisdictional for second or

subsequent offenses." 2017 VT 75, ¶ 12, 205 Vt. 418. "Thus, for second or subsequent offenses, the court must comply with the twenty-one-day rule in subsection (g) and the twenty-one-day and forty-two-day rules in subsection (h), absent consent by the defendant or good cause shown, or the civil suspension hearing must be dismissed for lack of jurisdiction." Id.; see State v. Slen, No. 2018-382, 2019 WL 3544062, at *1 (Vt. July 12, 2019) (unpub. mem.), https://www.vtcourts.gov/sites/default/files/documents/eo18-382.pdf (affirming trial court's decision granting defendant's motion to dismiss civil suspension because preliminary hearing was not held within twenty-one days of offense).

We conclude that defendant waived this challenge to his civil suspension by specifically relinquishing the procedural protections of 23 V.S.A. § 1205(g) and (h) at the hearing below. "Under the invited error doctrine, a branch of the doctrine of waiver, a party cannot induce an erroneous ruling and later seek to profit from the legal consequences of having the ruling set aside." State v. Morse, 2019 VT 58, ¶ 7, 211 Vt. 130 (quotation omitted). "There is no standard of review in such cases; the party who invites the error waives or intentionally relinquishes their right to challenge it on appeal." Id. (quotation omitted).

At the preliminary hearing in this case, defense counsel stated, "[w]e waive all of the applicable formalities and enter a denial to the civil suspension." Defense counsel later added that this included a waiver of the requirement that a final suspension hearing be held within forty-two days, indicating that the "applicable formalities" she referenced meant the hearing deadlines set forth in statute. Defendant subsequently moved to suppress evidence of his refusal on various grounds but never objected below that his preliminary hearing was held too late. This record shows that defendant made a "conscious choice" to forego the protection of § 1205(g) and consented to a later hearing. See State v. Gurung, 2025 VT 52, ¶¶ 6, 8 (explaining that invited error, or true waiver, requires proof of voluntary and intentional relinquishment of known right). Under these circumstances, we conclude that defendant waived his right to challenge the civil suspension based on noncompliance with the twenty-one-day rule. See State v. Longe, 170 Vt. 35, 39 n.* (1999) (concluding that defendant waived challenge to conviction for operating vehicle after suspension where defense counsel invited alleged error below).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice