

MONTANA SUPREME COURT

State v. Moore, 2018 MT 110, 391 Mont. 256

417 P.3d 328 (2018) · Decided May 8, 2018

SUMMARY

The Montana Supreme Court affirmed Michael Moore’s conviction for felony driving under the influence after a guilty plea. The court held that, although the arresting officer failed to complete the implied-consent advisory regarding Moore’s right to an independent blood test, the totality of the circumstances did not establish a due process violation warranting suppression of the blood-test results obtained under a search warrant. The court also declined to reach Moore’s challenge to medical records obtained by subpoena.

CASE DETAILS

COURT	Montana Supreme Court
WRITING FOR THE COURT	Justice Jim Rice; Mike McGrath, C.J.; Beth Baker, J.; James Jeremiah Shea, J.
JURISDICTION	Montana
DECIDED	May 8, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Moore appealed his felony DUI conviction entered after a guilty plea, reserving the right to challenge the denial of his suppression motions.
STANDARD OF REVIEW	The court reviewed de novo the District Court's decision denying the criminal defendant's motion to suppress.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Michael Moore v. State of Montana

TOPICS

criminal procedure

suppression of evidence

due process

search and seizure

probable cause

PRACTICE AREAS

criminal procedure

DUI

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether due process required the arresting officer to advise Moore of his right to obtain an independent blood test even though the State obtained his blood sample pursuant to a search warrant.
2. Whether the failure to complete the independent-test advisory violated Moore's due process rights under the circumstances of this case.
3. Whether Moore's medical records obtained by investigatory subpoena should be suppressed under the Montana constitutional right to privacy.

HOLDINGS

1. Due process requires an arresting officer to inform an accused of the right to obtain an independent blood test regardless of whether the accused consents to the officer-designated test or the State obtains the blood sample through a search warrant.
2. The failure to complete the independent-test advisory did not violate Moore's due process rights under the totality of the circumstances because Moore impeded the advisory, indicated that he would not participate in further testing until consulting counsel, overheard the officer describe the independent-test right during the warrant application, and obtained an independent blood alcohol analysis through the hospital.
3. The blood-test evidence was properly obtained under the search warrant; the court did not reach a separate privacy challenge to the medical records.

KEY QUOTATIONS

“Consequently, even when blood tests are obtained pursuant to a warrant, the independent test advisory is a component of due process for which suppression may remedy a violation.” (¶ 12)

“As we have explained herein, the independent test advisory is of constitutional dimension, and we do not excuse its reading lightly.” (¶ 15)

FACTUAL BACKGROUND

A Montana Highway Patrol trooper stopped Michael Moore after observing him leave the roadway and cross the center line. The trooper observed multiple signs of intoxication, learned that Moore had three prior DUI convictions, and arrested him after Moore refused preliminary testing and interrupted the implied-consent advisory by stating that he would not do anything until speaking with his attorney. The trooper obtained a telephonic search warrant for a blood draw, but incorrectly stated during the warrant application that Moore had been informed of his right to an independent blood test. Moore's blood test showed a .332 blood alcohol concentration, and a separate blood alcohol analysis was performed by the hospital for medical-treatment purposes.

PROCEDURAL HISTORY

After Moore was arrested for DUI, law enforcement obtained a telephonic search warrant authorizing a blood draw. Moore moved to suppress the warrant-obtained blood-test results, arguing that the officer violated due process by failing to advise him of his right to obtain an independent blood test. He separately moved to suppress medical records obtained by investigatory subpoena based on the Montana constitutional right to

privacy. The District Court denied both motions, and Moore pleaded guilty while reserving his suppression issues for appeal.

DISPOSITION

affirmed

CASES CITED

- State v. Neva, 2018 MT 81, ¶ 11, 391 Mont. 149, 415 P.3d 481
- State v. Neva, 2018 MT 81, ¶ 13, 391 Mont. 149, 415 P.3d 481
- State v. Strand, 286 Mont. 122, 951 P.2d 552 (1997)
- State v. Minkoff, 2002 MT 29, 308 Mont. 248, 42 P.3d 223
- State v. Schauf, 2009 MT 281, 352 Mont. 186, 216 P.3d 740
- State v. Clark, 234 Mont. 222, 762 P.2d 853 (1988)
- State v. West, 2008 MT 338, ¶ 32, 346 Mont. 244, 194 P.3d 683
- State v. Edmundson, 2014 MT 12, ¶ 17, 373 Mont. 338, 317 P.3d 169
- Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)
- County of Sacramento v. Lewis, 523 U.S. 833, 850, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)
- City of Missoula v. Williams, 2017 MT 282, ¶ 19, 389 Mont. 303, 406 P.3d 8