

COURT OF APPEALS OF MARYLAND

Alexander Dejarnette v. State of Maryland

Dejarnette · No. No. 41, September Term, 2021 · Decided March 25, 2022

SUMMARY

The Maryland Court of Appeals held that alleged compliance or noncompliance with the twenty-minute observation period in COMAR 10.35.02.08G affects the weight of breath-test results, not their admissibility. The Court concluded that the relevant statutes and regulation do not require exclusion of breath-test evidence for noncompliance with the observation period. It further held that the record supported, and the circuit court found, compliance with the observation-period requirement in this case.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Watts, J.; Getty, C.J.; McDonald, J.; Hotten, J.; Booth, J.; Biran, J.; Harrell, Jr., Glenn T., Senior Judge, specially assigned
JURISDICTION	Maryland
DECIDED	March 25, 2022
DOCKET	No. 41, September Term, 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dejarnette was convicted in the Circuit Court for Somerset County of driving under the influence of alcohol per se and driving while impaired by alcohol after the court admitted breath-test results. The Court of Special Appeals affirmed. The Court of Appeals granted certiorari and affirmed.
STANDARD OF REVIEW	Questions of law, including statutory interpretation, are reviewed de novo; factual findings are reviewed for clear error; and evidentiary admissibility determinations are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alexander Dejarnette v. State of Maryland

TOPICS

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QUESTIONS PRESENTED

1. Whether alleged noncompliance with the twenty-minute observation period in COMAR 10.35.02.08G renders breath-test results inadmissible or instead affects only the weight of the evidence.
2. Whether the record supported a finding that the officers complied with the twenty-minute observation period.
3. Whether the circuit court made findings on the record concerning compliance with the observation period.

HOLDINGS

1. Alleged noncompliance with the twenty-minute observation period in COMAR 10.35.02.08G affects the weight to be given to breath-test results, not their admissibility. Maryland's statutory exclusionary rule applies to violations of the applicable statutory provisions, not to alleged violations of the regulation, which contains no exclusionary provision for failure to comply with the observation period.
2. The regulation does not require an officer to maintain constant, fixed, uninterrupted visual attention for the entire twenty-minute period. Officers may use their visual, auditory, and olfactory senses and remain sufficiently close to determine whether the individual eats, drinks, smokes, or places a foreign substance in the mouth.
3. The record supported a finding that the officers complied with the twenty-minute observation period, and the circuit court made findings on the record that they did so.

KEY QUOTATIONS

"We hold that the plain language of the relevant statutes is clear and that the statutes do not provide that noncompliance with the twenty-minute observation period set forth in COMAR 10.35.02.08G results in the inadmissibility of evidence of breath test results." (2)

"We hold that the alleged compliance or noncompliance with the twenty-minute observation period goes to the weight to be given to breath test results, i.e., the weight of the evidence, not the admissibility." (2)

"Rather, like the Court of Special Appeals, we conclude that it is "unreasonable to require continuous, unbroken observation for twenty minutes"" (32)

FACTUAL BACKGROUND

A Maryland State Police trooper stopped DeJarnette after observing him twice move onto the shoulder and jerk back into the travel lane. The trooper smelled alcohol, observed bloodshot and glassy eyes, conducted field sobriety tests, and arrested DeJarnette at 2:12 a.m. DeJarnette arrived at the barracks at 2:21 a.m.; officers searched him and observed him before a breath test was administered at 2:43 and 2:45 a.m., with both tests registering .094. The officers testified that DeJarnette did not eat, drink, smoke, belch, vomit, or have a foreign substance in his mouth during the relevant period.

PROCEDURAL HISTORY

The circuit court denied Dejarnette's motion in limine to exclude breath-test results based on alleged noncompliance with the twenty-minute observation period in COMAR 10.35.02.08G. A jury acquitted him of negligent driving and driving under the influence of alcohol but convicted him of driving under the influence of alcohol per se and driving while impaired by alcohol. The Court of Special Appeals affirmed in *Dejarnette v. State*, 251 Md. App. 467, 254 A.3d 524 (2021). The Court of Appeals granted certiorari and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Motor Vehicle Admin. v. Deering, 438 Md. 611, 612, 615, 92 A.3d 495, 496, 498 (2014)
- Motor Vehicle Admin. v. Krafft, 452 Md. 589, 594, 158 A.3d 539, 542 (2017)
- Dejarnette v. State, 251 Md. App. 467, 469, 254 A.3d 524, 525 (2021)
- Dejarnette v. State, 476 Md. 264, 261 A.3d 240 (2021)
- Brooks v. State, 439 Md. 698, 708, 98 A.3d 236, 241-42 (2014)
- Johnson v. State, 467 Md. 362, 371, 225 A.3d 44, 49-50 (2020)
- Rogers v. State, 468 Md. 1, 14, 226 A.3d 261, 269 (2020), cert. denied, 141 S. Ct. 1052 (2021)
- King v. State, 434 Md. 472, 495, 76 A.3d 1035, 1048 (2013)
- Fitzgerald v. State, 384 Md. 484, 507-09, 864 A.2d 1006, 1019-20 (2004)
- McFarlin v. State, 409 Md. 391, 410, 975 A.2d 862, 873 (2009)
- Motor Vehicle Admin. v. Richards, 356 Md. 356, 368, 739 A.3d 58, 65 (1999)
- Sun Kin Chan v. State, 78 Md. App. 287, 311, 552 A.3d 1351, 1363 (1989)
- Casper v. State, 70 Md. App. 576, 521 A.2d 1281, cert. denied, 310 Md. 129, 527 A.2d 50 (1987)
- Brice v. State, 71 Md. App. 563, 576-77, 526 A.2d 647, 654 (1987)
- Montague v. State, 471 Md. 657, 673-74, 243 A.3d 546, 555-56 (2020)
- Reed v. Hill, 770 S.E.2d 501, 505, 508, 511-13 (W. Va. 2015)
- Vanderpool v. Dir. of Revenue, 226 S.W.3d 108, 110 (Mo. 2007) (en banc)

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