

SUPREME COURT OF MONTANA

Town of Columbus v. Harrington

307 Mont. 215 (Mont. 2001) · No. No. 99-140 · Decided December 11, 2001

SUMMARY

The Montana Supreme Court affirmed Loren Robert Harrington’s misdemeanor DUI conviction. The court held that the prosecutor’s comments and testimony regarding Harrington’s post-Miranda silence did not constitute Doyle error, although a separate comment regarding the absence of contradictory evidence was improper but harmless. The court also upheld admission of preliminary alcohol screening test results, the use of a report to refresh an officer’s recollection, and the challenged jury instructions.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice W. William Leaphart; Chief Justice Karla M. Gray; Justice James C. Nelson; Justice Jim Regnier; Justice Patricia Cotter
JURISDICTION	Montana
DECIDED	December 11, 2001
DOCKET	No. 99-140
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harrington appealed from a jury verdict, judgment, and sentence of the Twenty-Second Judicial District Court of Stillwater County, Montana, convicting him of misdemeanor driving under the influence of alcohol.
STANDARD OF REVIEW	Unpreserved constitutional claims were considered under Montana's discretionary common-law plain-error doctrine. Evidentiary admissibility and foundation rulings were reviewed for manifest abuse of discretion. Jury instructions were reviewed under the rule that the district court has broad discretion in formulating instructions, with the question being whether the instructions, viewed as a whole, fully and fairly stated the applicable law. Constitutional trial error was reviewed for harmlessness, based on whether there was a reasonable possibility the error contributed to the conviction.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Loren Robert Harrington v. Town of Columbus

TOPICS

criminal procedure

fifth amendment

miranda rights

evidence

statutory interpretation

PRACTICE AREAS

criminal law

criminal procedure

evidence

DUI

QUESTIONS PRESENTED

1. Whether the prosecutor's comments and testimony concerning Harrington's decision to remain silent violated the Fifth Amendment, Montana's constitutional privilege against self-incrimination, or due process, and whether the unpreserved claims were reviewable under the common-law plain-error doctrine.
2. Whether the District Court erred by permitting Officer Newell to use an arrest report and notes to refresh his memory and by admitting the preliminary alcohol screening test results.
3. Whether the jury instructions concerning expert opinions and the statutory inferences from alcohol-concentration evidence fully and fairly presented the law.

HOLDINGS

1. The prosecutor's voir-dire comments that Harrington did not have to testify, and testimony that Harrington received and heeded Miranda warnings, did not constitute Doyle error because they did not suggest that Harrington refused to give a statement or testify. The prosecutor's isolated closing comment that the State's evidence was uncontradicted was an improper reference to Harrington's decision not to testify, but the error was harmless.
2. The District Court did not abuse its discretion by allowing Officer Newell to refer to his report and notes to refresh his memory under Rule 612, Montana Rules of Evidence.
3. The portion of Rule 23.4.201(7)(b), ARM, limiting preliminary breath-test analysis to probable-cause evidence was invalid insofar as it conflicted with amended § 61-8-404(1)(b), MCA; the District Court correctly refused to exclude the PAST results on that basis.
4. The District Court did not abuse its discretion in admitting the PAST results after considering testimony and a training manual outside the jury's presence to establish that the device was approved and properly field-tested.
5. The jury instructions, considered as a whole, fully and fairly informed the jury of the applicable law.

KEY QUOTATIONS

"The plain error rule is reserved for exceptional cases and should be used sparingly." (36 P.3d at 941)

"We therefore conclude that the prosecutor's comment was error as an improper reference to the defendant's decision not to testify." (36 P.3d at 942)

"The single comment that the evidence was uncontradicted was an isolated one and there is no reasonable possibility that it may have contributed to Harrington's conviction." (36 P.3d at 943)

“The witness can then testify independently of the writing, and it is his memory or recollection which is used as evidence and not the writing.” (36 P.3d at 944)

“Accordingly, we hold that the District Court was correct in not excluding the PAST results based on Administrative Rule 23.4.201(7)(b).” (36 P.3d at 944-945)

“We hold that the jury instructions fully and fairly informed the jury on the applicable law.” (36 P.3d at 946)

FACTUAL BACKGROUND

Officer Scott Newell observed Harrington repeatedly cross the center line, drift within the lane, make a wide turn, and stop in a 45-mile-per-hour zone. After the stop, Newell observed bloodshot eyes, slurred speech, swaying, and an odor of alcohol, and Harrington performed field sobriety tests. Newell advised Harrington of his Miranda rights, and Harrington remained silent; a preliminary alcohol screening test was later administered and its estimated result was admitted at trial.

PROCEDURAL HISTORY

A jury convicted Harrington of DUI after a December 1998 trial. The District Court imposed a sixty-day sentence with all but twenty-four hours suspended, suspended his driving privileges for six months, imposed a \$350 fine, and required alcohol treatment. Harrington appealed, challenging prosecutorial comments and testimony concerning his post-Miranda silence, admission of report-based testimony and preliminary alcohol screening test results, and the jury instructions.

DISPOSITION

affirmed

CASES CITED

- State v. Baker, 2000 MT 307, 302 Mont. 408, 15 P.3d 379
- State v. Finley, 276 Mont. 126, 915 P.2d 208 (1996)
- State v. Sullivan, 280 Mont. 25, 927 P.2d 1033 (1996)
- Doyle v. Ohio, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976)
- State v. Dawson, 233 Mont. 345, 761 P.2d 352 (1988)
- State v. Anderson, 156 Mont. 122, 476 P.2d 780 (1970)
- State v. Hart, 154 Mont. 310, 462 P.2d 885 (1969)
- Desmond v. United States, 345 F.2d 225 (1st Cir. 1965)
- State v. Armstrong, 170 Mont. 256, 552 P.2d 616 (1976)
- State v. Dolan, 190 Mont. 195, 620 P.2d 355 (1980)
- State v. Van Kirk, 2001 MT 184, 306 Mont. 215, 32 P.3d 735
- Jim's Excavating Service, Inc. v. HKM Associates, 265 Mont. 494, 878 P.2d 248 (1994)
- Watkins v. Williams, 265 Mont. 306, 877 P.2d 19 (1994)

- Safeway, Inc. v. Montana Petroleum Release Compensation Board, 281 Mont. 189, 931 P.2d 1327 (1997)
- State v. Delaney, 1999 MT 317, 297 Mont. 263, 991 P.2d 461
- State v. Olson, 286 Mont. 364, 951 P.2d 571 (1997)
- State v. Brady, 2000 MT 282, 302 Mont. 174, 13 P.3d 941
- State v. Goulet, 283 Mont. 38, 938 P.2d 1330 (1997)
- State v. Johnson, 1998 MT 289, 291 Mont. 501, 969 P.2d 925

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