

SUPREME COURT OF MONTANA

State v. Freiburg

419 P.3d 1234 (Mont. 2018) · Decided June 12, 2018

SUMMARY

The Montana Supreme Court held that the district court erred by refusing to instruct the jury on DUI and DUI per se as lesser-included offenses of criminal child endangerment. Although Freiburg challenged the underlying DUI allegations, he also presented evidence supporting an alternative theory that his conduct did not create a substantial risk of death or serious bodily injury to the children. The court reversed the conviction and remanded the case.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Jim Rice; Mike McGrath; Dirk M. Sandefur; Laurie McKinnon; James Jeremiah Shea
JURISDICTION	Montana
DECIDED	June 12, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Freiburg appealed his felony conviction for criminal child endangerment by driving under the influence after the district court refused to give requested lesser-included offense instructions for DUI and DUI per se.
STANDARD OF REVIEW	The refusal to give a lesser-included offense instruction is reviewed for abuse of discretion; the legal determinations underlying jury instructions are reviewed for correctness. Reversible error requires prejudice to the defendant's substantial rights.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Jacob Freiburg v. State of Montana

TOPICS

- lesser included offense instructions
- jury instructions
- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Appellate practice

QUESTIONS PRESENTED

1. Whether the district court erred by refusing to instruct the jury on DUI and DUI per se as lesser-included offenses of criminal child endangerment by DUI and criminal child endangerment by DUI per se.

HOLDINGS

1. DUI and DUI per se qualify as lesser-included offenses of the corresponding criminal child-endangerment charges because the greater offenses require proof of the same underlying DUI conduct plus additional elements concerning mental state and the substantial risk of death or serious bodily injury to a child.
2. A defendant is entitled to a lesser-included offense instruction when the defendant presents alternative theories supported by the evidence, including one theory that could lead to acquittal of the greater offense while still permitting conviction of the lesser offense.
3. The district court abused its discretion by refusing to give the requested DUI and DUI per se lesser-included offense instructions, and the error required reversal and remand.

KEY QUOTATIONS

“However, when a defendant presents an alternative theory, supported by evidence, which would, if believed, require acquittal of a higher charge, but nonetheless permit conviction on a lesser-included offense, then he satisfies the Castle test and is entitled to a lesser-included offense instruction.” (419 P.3d at 1239)

“It is a fundamental rule in this state that a criminal defendant is entitled to jury instructions that cover every issue or theory having support in the evidence.” (419 P.3d at 1239)

FACTUAL BACKGROUND

Deputy Joyce stopped Jacob Freiburg after observing him spin his tires and accelerate quickly while driving through a campground. Freiburg displayed signs of alcohol consumption, performed poorly on field sobriety tests, admitted drinking, and later had a warrant-obtained blood sample showing a .199 blood-alcohol concentration. Freiburg’s three children, all under fourteen, were in the vehicle, and one child appeared intoxicated and became highly upset during the stop. At trial, Freiburg disputed the DUI evidence and argued that his driving did not cause a substantial risk of death or serious bodily injury to the children.

PROCEDURAL HISTORY

The State charged Freiburg with criminal child endangerment by DUI and later added an alternative charge of criminal child endangerment by DUI per se. After the district court refused Freiburg’s requested lesser-included offense instructions, the jury convicted him of criminal child endangerment by DUI. The district court denied his motion for a new trial, and Freiburg appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The conviction is reversed and the matter is remanded for further proceedings consistent with the opinion, including proper consideration of DUI and DUI per se lesser-included offense instructions.

CASES CITED

- State v. Daniels, 2017 MT 163, 388 Mont. 89, 397 P.3d 460
- State v. Jay, 2013 MT 79, 369 Mont. 332, 298 P.3d 396
- State v. Lackman, 2017 MT 127, 387 Mont. 459, 395 P.3d 477
- State v. Carnes, 2015 MT 101, 378 Mont. 482, 346 P.3d 1120
- State v. Shegrud, 2014 MT 63, 374 Mont. 192, 320 P.3d 455
- State v. Castle, 285 Mont. 363, 948 P.2d 688 (1997)
- State v. Martinez, 1998 MT 265, 291 Mont. 306, 968 P.2d 705