

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Billie Erman Dallman

State v. Dallman, 2015 MT 219N (Mont. 2015) · No. DA 14-0735 · Decided August 4, 2015

SUMMARY

The Montana Supreme Court affirmed the denial of Billie Dallman’s motion to suppress blood-test evidence obtained after his arrest for driving under the influence. The court held that refusal of a preliminary alcohol screening test under § 61-8-409, MCA, did not prevent officers from requesting and obtaining the defendant’s voluntary consent to a separate post-arrest blood test under § 61-8-402, MCA.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Laurie McKinnon; Chief Justice Mike McGrath; Justice Beth Baker; Justice Michael E. Wheat; Justice Patricia Cotter
JURISDICTION	Montana
DECIDED	August 4, 2015
DOCKET	DA 14-0735
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dallman appealed the denial of his motion to suppress the results of a warrantless post-arrest blood test in a DUI prosecution.
STANDARD OF REVIEW	The court reviews a district court's ruling on a motion to suppress to determine whether its findings of fact are clearly erroneous and whether its interpretation and application of the law are correct.
PRECEDENTIAL VALUE	Nonprecedential; memorandum opinion designated noncitable under Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules.
PARTIES	Billie Erman Dallman v. State of Montana

TOPICS

suppression of evidence

warrant requirement

search and seizure

statutory interpretation

appellate procedure

PRACTICE AREAS

criminal procedure

DUI

evidence

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether Dallman's refusal of a preliminary alcohol screening test under Montana Code Annotated § 61-8-409 barred the deputy from requesting a subsequent post-arrest blood test under § 61-8-402.
2. Whether the post-arrest blood-test evidence had to be suppressed because the blood test was obtained without a warrant.

HOLDINGS

1. A refusal of a preliminary alcohol screening test under § 61-8-409 does not prevent an officer from requesting and obtaining consent to a separate post-arrest blood or breath test under § 61-8-402.
2. A warrant was not required because Dallman consented to the post-arrest blood test; the warrant requirement in § 61-8-402 applies when the person refuses the test.

KEY QUOTATIONS

"There is nothing in the statutes that prohibits a deputy from requesting and obtaining consent to a post-arrest blood or breath sample." (¶ 11)

FACTUAL BACKGROUND

A deputy observed Dallman's vehicle cross lane lines and the double yellow line, giving the deputy reasonable suspicion to conduct a traffic stop. Dallman admitted drinking, exhibited signs of intoxication, and performed poorly on standardized field sobriety tests. He refused a preliminary alcohol screening test after receiving the applicable advisory, was arrested for DUI, and approximately ten minutes later consented to a blood test after receiving the Montana implied-consent advisory.

PROCEDURAL HISTORY

After Dallman was arrested for driving under the influence, he consented to a blood test. He moved to suppress the blood-test evidence, arguing that his refusal of a preliminary alcohol screening test barred a subsequent warrantless blood test. The Ravalli County District Court denied the motion to suppress, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Muir v. Bilderback, 2015 MT 180, ¶ 9, 379 Mont. 459, ___ P.3d ___
- City of Missoula v. Armitage, 2014 MT 274, ¶¶ 19-20, 376 Mont. 448, 335 P.3d 736

OPINION

PER CURIAM.

August 4 2015 DA 14-0735 Case Number: DA 14-0735 IN THE SUPREME COURT OF THE STATE OF MONTANA 2015 MT 219N STATE OF MONTANA, Plaintiff and Appellee, v. BILLIE ERMAN DALLMAN, Defendant and Appellant. APPEAL FROM: District Court of the Twenty-First Judicial District, In and For the County of Ravalli, Cause No. DC-2014-84 Honorable James A. Haynes, Presiding Judge COUNSEL OF RECORD: For Appellant: David M. Maldonado, Stevenson Law Office, Missoula, Montana For Appellee: Timothy C. Fox, Montana Attorney General, Pamela P. Collins, Assistant Attorney General, Helena, Montana William E. Fulbright, Ravalli County Attorney, Angela Wetzsteon, Deputy County Attorney, Hamilton, Montana Submitted on Briefs: June 24, 2015 Decided: August 4, 2015 Filed:

Clerk Justice Laurie McKinnon delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Billie Dallman appeals from an order of the Twenty-First Judicial District, Ravalli County, denying his Motion to Suppress evidence related to a blood test taken after he was arrested for Driving While Under the Influence of Alcohol (DUI).

We affirm. ¶3 The issue on appeal is whether the district court properly denied Dallman's motion to suppress the results of a blood test, taken with his consent, under § 61-8-402, MCA, after he refused a preliminary alcohol screening test under § 61-8-409, MCA. ¶4 The parties have stipulated to the material facts in this case.

On March 30, 2014, at approximately 1:00 a.m., Ravalli County Sheriff Deputy Reichert observed a vehicle operated by Dallman drift over the white-dotted lane line three times, into the opposite lane twice with the driver's side tires, and across the double yellow lines while turning off the highway. Dallman does not dispute that Deputy Reichert had reasonable suspicion to stop his vehicle.

Deputy Reichert conducted a roadside investigatory stop where Dallman admitted to drinking between four and five beers and a shot of whiskey at a bar in Florence. Deputy Reichert noticed an overwhelming odor of alcoholic beverage coming from Dallman's breath and observed Dallman's eyes to be bloodshot and glassy. ¶5 Based on observed indicators of impairment, the deputy asked Dallman to perform standardized field sobriety tests (SFSTs).

Dallman performed poorly on the SFSTs. Upon 2 completion of the tests, Deputy Reichert read Dallman the PAST (Preliminary Alcohol Screening Test) advisory. This advisory informed Dallman that by operating a vehicle on public roads, he had given his implied consent to a preliminary breath test; that he had the right to refuse the test; and if he refused to provide a breath test, Dallman's driver's license would be suspended.

Dallman refused the PAST test. Deputy Reichert stated that he would seize Dallman's license and that the State would be suspending Dallman's license based on his refusal. Dallman was placed under arrest for DUI and put in the back of Deputy Reichert's patrol car. Approximately ten minutes later, Deputy Reichert read Dallman the Montana Implied Consent Advisory pursuant to § 61-8-402, MCA, and requested Dallman submit to a blood test.

Dallman consented and a blood sample was subsequently taken without a warrant. ¶6 On June 27, 2014, Dallman filed a motion to suppress the evidence related to the blood sample. The District Court denied the motion on August 19, 2014. Dallman appeals. ¶7 We review a district court's ruling on a motion to suppress evidence to determine whether the court's findings of fact are clearly erroneous and whether the court's interpretation and application of the law are correct.

Muir v. Bilderback, 2015 MT 180, ¶ 9, 379 Mont. 459, ___ P.3d ___. ¶8 Dallman argues that the 2011 amendment to § 61-8-409(4), MCA, changed the procedural requirements during the course of a DUI investigation. He alleges that once he refused a preliminary alcohol screening test, the deputy was not allowed to request a blood sample under § 61-8-402, MCA, and that another test could not be given absent a warrant.

3 He argues that the blood test results should be suppressed based on the exclusionary rule and violation of the warrant requirement. We disagree. ¶9 We recently observed in *City of Missoula v. Armitage*, 2014 MT 274, ¶¶ 19-20, 376 Mont. 448, 335 P.3d 736, that state law provides for two separate tests to be given to persons suspected of driving under the influence.

Section 61-8-409(1), MCA, provides that a preliminary alcohol screening of a person's breath may be administered during an investigative stop, based upon a particularized suspicion, for the purpose of estimating the person's blood alcohol concentration. If the PAST is refused, the person's driver's license may be administratively suspended for up to one year.

Section 61-8-409(3), MCA. Once refused, a PAST may not be administered except under circumstances allowing the officer to apply for a warrant. Section 61-8-409(4), MCA. Dallman was advised accurately of these statutory provisions and Deputy Reichert's actions complied with the provisions of § 61-8-409(3), MCA. ¶10 Pursuant to § 61-8-402(1), (2), MCA, if a person suspected of driving under the influence is arrested, a breath or blood test may be given, based upon probable cause, for the purpose of determining the presence of alcohol or drugs in the person's body.

Section 61-8-402(1), (2), MCA. If a person refuses to submit to a blood test, then the test may not be given absent a warrant. Section 61-8-402(4), (5), MCA. ¶11 Here, Dallman consented to a post-arrest blood test. Dallman does not claim that his consent was involuntary or coerced. Instead, Dallman maintains that the 2011 amendments to §§ 61-8-402 and 61-8-409, MCA, mandate that no blood test may be given absent a warrant, even where the arrestee consents to the blood test.

Such an interpretation is illogical 4 and not supported by the clear language of the statute mandating a warrant be obtained only when the person has refused a test. There is nothing in the statutes that prohibits a deputy from requesting and obtaining consent to a post-arrest blood or breath sample.

Moreover, Armitage makes clear that a PAST test and a post-arrest test are two separate processes and that refusal of a PAST test, as Dallman did, does not change the procedure to be followed pursuant to § 61-8-402, MCA, for a post-arrest test. ¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions.

In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of relevant standards of review. The District Court's interpretation and application of the law were correct and its order denying Dallman's motion to suppress is affirmed. /S/ LAURIE McKINNON We Concur: /S/ MIKE McGRATH /S/ BETH BAKER /S/ MICHAEL E WHEAT /S/ PATRICIA COTTER 5