

SUPREME COURT OF MONTANA

State v. Snell

2004 MT 334, 324 Mont. 173 (2004) · No. No. 03-109 · Decided November 23, 2004

SUMMARY

The Montana Supreme Court considered whether prior DUI convictions could be used to enhance Kenneth Snell’s punishment, whether preliminary alcohol screening test results were admissible, and whether a law enforcement officer could provide lay opinion testimony regarding intoxication. The court held that the prior convictions were constitutionally valid and that the officer’s lay testimony was admissible. It held that the PAST results were improperly admitted and prejudicial, reversed in part, and remanded for retrial.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Regnier; Patricia O. Cotter; James C. Nelson; W. William Leaphart; John Warner; Karla M. Gray; Jim Rice; Jim Regnier
JURISDICTION	Montana
DECIDED	November 23, 2004
DOCKET	No. 03-109
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Following jury convictions for felony fourth-offense DUI and misdemeanor driving while license suspended or revoked, Snell appealed the denial of his motion to dismiss based on allegedly unconstitutional prior DUI convictions, the admission of preliminary alcohol screening test evidence, and the admission of a police officer's lay opinion regarding intoxication. The Montana Supreme Court granted rehearing, withdrew its prior opinion, and issued this superseding opinion.
STANDARD OF REVIEW	Constitutional issues and denial of a criminal motion to dismiss are reviewed de novo. Evidentiary rulings, including rulings on motions in limine and admission of opinion testimony, are reviewed for abuse of discretion. Harmless-error review follows the structural-error/trial-error and cumulative-evidence framework of State v. Van Kirk.
PRECEDENTIAL VALUE	Published precedential opinion

TOPICS

suppression of evidence

evidence

criminal procedure

harmless error

right to counsel

PRACTICE AREAS

criminal law

criminal procedure

evidence

DUI

QUESTIONS PRESENTED

1. Whether the district court erred in denying Snell's motion to dismiss based on his claim that two prior DUI convictions were constitutionally infirm because he was not provided counsel.
2. Whether the district court properly admitted the first preliminary alcohol screening test result as evidence of guilt at trial.
3. Whether the district court properly allowed a law enforcement officer who was not disclosed as an expert witness to testify, based on personal observations, that Snell was under the influence of alcohol.

HOLDINGS

1. The district court correctly denied Snell's motion to dismiss because Snell failed to produce direct evidence sufficient to overcome the presumption that his 1988 and 1990 DUI convictions were regular and constitutionally valid.
2. The district court abused its discretion by admitting the first Alco-Sensor III PAST result as evidence of Snell's guilt. The error was prejudicial because the State did not establish the test's reliability and the PAST result was not cumulative of other evidence proving intoxication.
3. The district court did not abuse its discretion by allowing Officer Harrison to testify that Snell was under the influence of alcohol, even though Harrison was not disclosed as an expert witness.

KEY QUOTATIONS

“Snell had the burden to prove, by direct evidence, that he did not voluntarily, knowingly and intelligently waive his right to counsel, in order to rebut the presumption of regularity.” (¶ 30)

“If instead, the tainted evidence is not cumulative and is presented to prove an element of the crime, such admission is not harmless and is reversible error.” (¶ 40)

“We reverse and remand this case to the District Court for retrial during which the State may pursue a DUI conviction utilizing admissible evidence consistent with this Opinion.” (¶ 48)

FACTUAL BACKGROUND

Officer Danny Pat Harrison stopped Snell after observing traffic violations and weaving on Interstate 90. Harrison observed an odor of alcohol, bloodshot eyes, and other signs of intoxication; Snell admitted drinking beer. Snell provided a preliminary alcohol screening test reading of .168, refused field sobriety tests, and later

provided a second PAST reading of .148, which the district court excluded. The State relied on three prior DUI convictions to charge Snell with felony fourth-offense DUI.

PROCEDURAL HISTORY

Snell was charged in the Fourth Judicial District Court of Missoula County and convicted by a jury of fourth-offense DUI and driving while license suspended or revoked. The district court denied his motion to dismiss, admitted the first PAST result, excluded a second PAST result, and permitted the arresting officer to testify that Snell was under the influence. The Supreme Court affirmed the ruling concerning the prior convictions and lay testimony, but reversed the admission of the PAST evidence and remanded for retrial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for retrial. On retrial, the State may pursue a DUI conviction using admissible evidence consistent with the opinion; the improperly admitted PAST evidence may not be used as evidence of guilt absent a sufficient reliability foundation.

CASES CITED

- State v. Snell, 2004 MT 258, 323 Mont. 84
- Maine v. Moulton, 474 U.S. 159 (1985)
- State v. Craig, 274 Mont. 140, 906 P.2d 683 (1995)
- State v. Okland, 283 Mont. 10, 941 P.2d 431 (1997)
- State v. Insua, 2004 MT 14, 319 Mont. 254, 84 P.3d 11
- State v. Moga, 1999 MT 283, 297 Mont. 1, 989 P.2d 856
- State v. Peterson, 2002 MT 65, 309 Mont. 199, 44 P.3d 499
- City of Missoula v. Robertson, 2000 MT 52, 298 Mont. 419, 998 P.2d 144
- State v. Castle, 1999 MT 141, 295 Mont. 1, 982 P.2d 1035
- State v. Monaco, 277 Mont. 221, 921 P.2d 863 (1996)
- State v. Weldele, 2003 MT 117, 315 Mont. 452, 69 P.3d 1162
- State v. Strizich, 286 Mont. 1, 952 P.2d 1365 (1997)
- State v. Crawford, 2003 MT 118, 315 Mont. 480, 68 P.3d 848
- State v. Van Kirk, 2001 MT 184, 306 Mont. 215, 32 P.3d 735
- Barmeyer v. Montana Power Co., 202 Mont. 185, 657 P.2d 594 (1983)
- Martel v. Montana Power Co., 231 Mont. 96, 752 P.2d 140 (1988)
- Hulse v. State, 1998 MT 108, 289 Mont. 1, 961 P.2d 75
- State v. Bradley, 262 Mont. 194, 864 P.2d 787 (1993)
- State v. Nobach, 2002 MT 91, 309 Mont. 342, 46 P.3d 618

