

UTAH COURT OF APPEALS

State v. Montgomery

2026 UT App 77 · No. 20241296-CA · Decided May 14, 2026

SUMMARY

The Utah Court of Appeals held that an initial mouth check is a foundational requirement for admitting breath alcohol test results under the Baker observation-period framework. Because the administering officer did not perform a mouth check before the observation period, the court reversed the denial of the defendant’s motion in limine, reversed his DUI conviction, and remanded for further proceedings.

CASE DETAILS

COURT	Utah Court of Appeals
WRITING FOR THE COURT	Gregory K. Orme; Ryan M. Harris; Ryan D. Tenney
JURISDICTION	Utah Court of Appeals
DECIDED	May 14, 2026
DOCKET	20241296-CA
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Montgomery entered a conditional no-contest plea to driving under the influence after the district court denied his motion in limine seeking to exclude breath-alcohol-test results. He appealed under Utah Rule of Criminal Procedure 11(j), reserving the right to challenge the denial of the motion.
STANDARD OF REVIEW	Evidentiary admissibility decisions are generally reviewed for abuse of discretion, but whether the district court applied the correct legal standard is reviewed for correctness.
PRECEDENTIAL VALUE	Published and precedential Utah Court of Appeals opinion
PARTIES	Nathan Montgomery v. State of Utah

TOPICS

- suppression of evidence
- evidence
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal law
- DUI
- evidence
- appellate practice

QUESTIONS PRESENTED

1. Whether an initial mouth check is a foundational requirement for the admissibility of a breath-alcohol test under Utah's Baker-based framework.
2. Whether the district court erred by admitting the breath-alcohol-test results based on video and other evidence despite the absence of an initial mouth check.

HOLDINGS

1. An initial mouth check is a foundational requirement for the admissibility of breath-alcohol-test results because it establishes that the suspect's mouth was clear before the observation period and test.
2. The district court erred as a matter of law in denying Montgomery's Baker motion because the officer failed to perform the required mouth check; video evidence could not substitute for that foundational step.

KEY QUOTATIONS

“We agree and hold that a mouth check is a foundational requirement for the admissibility of breath alcohol tests.” (¶ 10)

“When viewed together, Vialpando and Relyea establish that an initial mouth check is required to satisfy the third foundational requirement for admissibility of breath alcohol test results.” (¶ 15)

“Because Officer failed to perform a mouth check prior to the observation period, the district court erred as a matter of law when it denied the Baker motion seeking to exclude the results of Montgomery’s breath alcohol test.” (¶ 17)

FACTUAL BACKGROUND

An officer stopped Montgomery after observing him drive around a police barricade and detected an odor of alcohol, bloodshot eyes, slurred speech, and signs of impairment during an incomplete field sobriety test. At the police station, Montgomery agreed to a breath-alcohol test after an observation period of more than thirty minutes. The officer did not check Montgomery's mouth before the observation period, although the officer's body camera recorded the observation period and test administration. The test measured Montgomery's breath-alcohol level at 0.21.

PROCEDURAL HISTORY

The State charged Montgomery with second-offense DUI and failure to observe a barricade. The district court denied Montgomery's Baker motion, reasoning that high-quality body-camera footage and the interactions captured during the observation period supplied other evidence that his mouth was clear, and Montgomery entered a conditional no-contest plea. The Utah Court of Appeals reversed the DUI conviction because the administering officer had not performed an initial mouth check and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter is remanded to the district court for further proceedings consistent with the opinion.

CASES CITED

- State v. Baker, 355 P.2d 806 (Wash. 1960) (en banc)
- State v. Sery, 758 P.2d 935 (Utah Ct. App. 1988)
- State v. Green, 2023 UT 10, 532 P.3d 930
- State v. Vialpando, 2004 UT App 95, 89 P.3d 209
- State v. De La Rosa, 2019 UT App 110, 445 P.3d 955
- State v. Relyea, 2012 UT App 55, 288 P.3d 278
- State v. Trevino, 903 P.2d 447 (Wash. 1995)
- Salt Lake City v. Womack, 747 P.2d 1039 (Utah 1987)