

SUPREME COURT OF MONTANA

State of Montana v. Beth Mount Joy Williams

2018 MT 19N (Mont. 2018) · No. DA 17-0077 · Decided February 6, 2018

SUMMARY

The Montana Supreme Court affirmed the denial of Beth Williams’s motion to exclude Intoxilyzer 8000 breath-test evidence in a DUI proceeding. The court held that civil spoliation remedies do not apply in criminal cases and that the State’s failure to maintain accessible COBRA data did not constitute a due-process violation because Williams did not show bad faith. The memorandum opinion is noncitable and does not establish precedent.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Laurie McKinnon; Justice Mike McGrath; Justice James Jeremiah Shea; Justice Beth Baker; Justice Jim Rice
JURISDICTION	Montana
DECIDED	February 6, 2018
DOCKET	DA 17-0077
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Fourth Judicial District Court denying Williams's motion to exclude Intoxilyzer 8000 breath-test evidence in a DUI proceeding. The case reached the Montana Supreme Court after Williams appealed her Justice Court conviction de novo to the District Court, entered a no-contest plea after the motion was denied, and received a reduced charge.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review; it reviews the District Court's ruling on the motion to exclude and its due-process determination.
PRECEDENTIAL VALUE	Nonprecedential; memorandum opinion expressly designated noncitable under Montana Supreme Court Internal Operating Rules § I, ¶ 3(c).
PARTIES	Beth Mount Joy Williams v. State of Montana

TOPICS

criminal procedure

due process

suppression of evidence

evidence

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

DUI

QUESTIONS PRESENTED

1. Whether spoliation remedies apply in a criminal proceeding when the State allegedly fails to preserve COBRA data underlying an Intoxilyzer 8000 breath-test result.
2. Whether the State's failure to maintain software making potentially useful COBRA data accessible denied Williams due process under *Arizona v. Youngblood*.

HOLDINGS

1. Spoliation is not applicable in this criminal proceeding because the Montana Rules of Criminal Procedure, rather than the Montana Rules of Civil Procedure, govern criminal cases.
2. The State's failure to maintain software making potentially useful COBRA data accessible did not deny Williams due process because the failure was not undertaken in bad faith.

KEY QUOTATIONS

“unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” (¶ 7)

FACTUAL BACKGROUND

A highway patrol trooper observed Williams driving at varying speeds, signaling when no turn was possible, weaving, and crossing the fog line. After the stop, the trooper observed signs of impairment, arrested Williams for DUI, and obtained a breath sample showing an alcohol concentration of 0.145 on an Intoxilyzer 8000. Williams sought exclusion of the result because the State had not preserved COBRA data in an accessible format, but the evidence showed no reported instrument error and no indication that the State acted to dispose of evidence.

PROCEDURAL HISTORY

The Missoula County Justice Court convicted Williams of DUI. She appealed de novo to the Fourth Judicial District Court and moved to exclude her breath-test results based on the State's failure to preserve COBRA data. After an evidentiary hearing, the District Court denied the motion, concluding that Williams had not shown the data would contain significant favorable or exculpatory evidence and that the State had not acted in bad faith. Williams then changed her plea to no contest, obtained a reduced charge, and appealed; the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Oliver v. Stimson Lumber Co., 1999 MT 328, ¶ 31, 297 Mont. 336, 993 P.2d 11
- Spotted Horse v. BNSF Ry. Co., 2015 MT 148, ¶ 20, 379 Mont. 314, 350 P.3d 52
- State v. Jeffries, 2018 MT 17, ¶¶ 21, 25, ___ Mont. ___, ___ P.3d ___
- Arizona v. Youngblood, 488 U.S. 51, 58, 109 S. Ct. 333, 337 (1988)

OPINION

PER CURIAM.

02/06/2018 DA 17-0077 Case Number: DA 17-0077 IN THE SUPREME COURT OF THE STATE OF MONTANA 2018 MT 19N STATE OF MONTANA, Plaintiff and Appellee, v. BETH MOUNT JOY WILLIAMS, Defendant and Appellant. APPEAL FROM: District Court of the Fourth Judicial District, In and For the County of Missoula, Cause No. DC-32-2016-333 Honorable John W. Larson, Presiding Judge COUNSEL OF RECORD: For Appellant: Martin W. Judnich, Vincent J. Pavlish, Judnich Law Office, Missoula, Montana For Appellee: Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant Attorney General, Helena, Montana Kirsten H. Pabst, Missoula County Attorney, Selene Koepke, Deputy County Attorney, Missoula, Montana For Amicus Curiae: Matthew A. Dodd, Dodd Law Firm, P.C., Bozeman, Montana Submitted on Briefs: November 8, 2017 Decided: February 6, 2018 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 Beth Williams (Williams) appeals from an order of the Fourth Judicial District Court, Missoula County, denying her motion to exclude breath evidence in a Driving Under the Influence of Alcohol (DUI) proceeding against her.

The District Court issued its order on Williams's appeal from the Missoula County Justice Court. We affirm. ¶3 On January 19, 2016, Highway Patrol Trooper Smart observed Williams driving at varying speeds, signaling left when no left turn was possible, weaving within her lane, and crossing the fog line. Trooper Smart initiated a traffic stop and noticed Williams's speech was slurred, her eyes were bloodshot, her reaction time and movements were slow, and her gait was unsteady.

Trooper Smart arrested Williams for DUI and transported her to the Missoula County Detention Center. Williams provided a breath sample on the Intoxilyzer 8000 indicating she had an alcohol concentration of 0.145. The State charged Williams with DUI.

The Missoula County Justice Court subsequently convicted Williams of DUI. Williams appealed de novo to the Fourth Judicial District Court, Missoula County, and filed a motion in limine to exclude her Intoxilyzer 8000 breath test results. Williams argued the evidence should be excluded or her DUI dismissed because of the State's failure to preserve Computer Online Breath Records Archive (COBRA) data underlying her breath 2 test results.

Williams maintained the State's actions resulted in spoliation of the evidence or, alternatively, denial of her right to due process. ¶4 The District Court held an evidentiary hearing. Matthew Malhiot (Malhiot), the proprietor of Forensic Alcohol Consulting & Training, testified regarding the Intoxilyzer 8000 and the fact that some other states have determined that COBRA statistical analysis may show that an Intoxilyzer 8000 malfunctioned.

Malhiot testified that the Intoxilyzer 8000 saves electronic data on an internal memory card inside the unit and the software the State uses does not allow for COBRA data to be accessed or transferred off the unit. Malhiot testified that Williams's Breath Analysis Report Form (BARF) indicated the Intoxilyzer 8000 did not encounter any errors when it conducted Williams's breath test.

Benjamin Vetter (Vetter), the director of the Breath Alcohol Program at the State Crime Lab, also testified. Vetter testified that if the Intoxilyzer 8000 encounters an error during a breath test, the error will be indicated on the Intoxilyzer 8000's screen or will print. Vetter testified that the State is currently in the process of obtaining funding to purchase new Intoxilyzer 9000 units and software that will make COBRA data accessible. ¶5 The District Court concluded Williams did not establish the COBRA data would contain "evidence of significance either favorable or exculpatory" and the State's failure to maintain software making COBRA data accessible was not in bad faith.

The District Court denied Williams's motion to exclude concluding the State had not spoliated evidence or denied Williams due process. Williams changed her plea from not guilty to no contest and the State reduced her charge. Williams is supported by amicus curiae, the National College for DUI Defense, on appeal. 3 ¶6 On appeal, Williams first argues spoliation remedies are available in criminal cases.

Spoliation is a civil cause of action where relevant evidence is destroyed prior to trial. *Oliver v. Stimson Lumber Co.*, 1999 MT 328, ¶ 31, 297 Mont. 336, 993 P.2d 11. Spoliation remedies include sanctions outlined in the Montana Rules of Civil Procedure. *Spotted Horse v. BNSF Ry. Co.*, 2015 MT 148, ¶ 20, 379 Mont. 314, 350 P.3d 52.

In criminal cases, the rules of criminal procedure outlined in Title 46, MCA, apply, not the rules of civil procedure. *State v. Jeffries*, 2018 MT 17, ¶ 25, ___ Mont. ___, ___ P.3d ___. This is a criminal proceeding and spoliation is not applicable. ¶7 Second, Williams argues the State denied

her due process by failing to maintain potentially useful COBRA data in an accessible format and by intentionally deleting it.

In *Arizona v. Youngblood*, the United States Supreme Court held that “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” 488 U.S. 51, 58, 109 S. Ct. 333, 337 (1988). COBRA data is potentially useful; however, the State’s failure to maintain software making COBRA data accessible was not made to dispose of evidence and, therefore, does not demonstrate the State acted in bad faith.

See Jeffries, ¶ 21. Therefore, we conclude Williams was not denied due process. ¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

4 ¶9 Affirmed. /S/ LAURIE McKINNON We Concur: /S/ MIKE McGRATH /S/ JAMES JEREMIAH SHEA /S/ BETH BAKER /S/ JIM RICE 5